IN THE SUPREME COURT OF FLORIDA

CASE NO. 90,197

ON APPEAL FROM
THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

RESPONDENTS' SUBSTITUTE ANSWER BRIEF ON THE MERITS

TABLE OF CONTENTS

TABLE OF CITATIONS

STATUTORY PROVISIONS AND RULES PAGE(S)

PRELIMINARY STATEMENT

In this Answer Brief, Petitioners RUPERT B. BROWN and LETTIE NELL BROWN, his wife, are referred to as "the Browns", "defendants" or "petitioners". Respondents, THE ESTATE OF A.P. STUCKEY, SR., deceased, and SARAH STUCKEY, are referred to by their names or collectively as "the Stuckeys", "plaintiffs" or "respondents".

References to the Record on Appeal will appear as (R.___ (volume), ___ (page or exhibit)). Citations to the trial transcript will appear as (T. ___). Trial exhibits will be identified by reference to their volume location in the Record on Appeal, as well as by which party introduced them (Plaintiff (P.) or Defendant (D.)) and the exhibit number; for example: (R.I P.Ex 1) reflects Plaintiffs' Exhibit 1, introduced in Volume I of the Record.

The video deposition of A.P. Stuckey, (R.XI,14; P.Ex 42), is cited according to the pages of his written deposition as shown by video at trial and entered into evidence as Plaintiffs' Exhibit 42 and included in the Record on Appeal in Volume VI (R.VI).

References to the Browns' Initial Brief to the Merits, dated November 13, 1997, appear as (Br. ___).

STATEMENT OF THE CASE

The Stuckeys generally agree with the Statement of the Case contained in the Brown's Initial Brief to the Merits. The Stuckeys specifically disagree with the following characterizations:

1. "However, the Court, in its order granting Defendants' Motion for New Trial, found the verdict contrary to the manifest weight of the evidence and gave a detailed analysis of those factors which led to that conclusion." (Br. 3 (emphasis added).) The key issue in this case is whether the trial judge's somewhat verbose order really contained a "detailed analysis" sufficient to justify overriding the jury's verdict. Accordingly, the Stuckeys would agree with this paragraph if amended to read: "The court entered an order granting Defendants' Motion for New Trial."

2. "It [the district court] sought to correct its opinion . . . ." (Br. 4 (emphasis added).) The district court's second opinion was the result of the Browns' motion for clarification. The district court did not indicate that it was attempting to "correct" its earlier decision. Accordingly, the Stuckeys would agree with this paragraph if amended to read: "In its opinion, the district court clarified its reasoning for reversing the trial judge's order granting a new trial."

STATEMENT OF THE FACTS

The Stuckeys disagree with the Statement of the Facts contained in the Brown's Initial Brief to the Merits.

In early 1981, Appellants, A.P. Stuckey and his wife Sarah Stuckey, entered into an oral joint venture/partnership agreement

with Appellees, Rupert and Lettie Brown, for the purpose of establishing and operating a horse farm for the breeding, training, and racing of thoroughbred race horses. (R.VI, 5.) Initially, the partnership was an ideal relationship for all parties. Mr. Stuckey was a highly skilled, experienced, and reputable race horse trainer who had a dream of owning his own thoroughbred farm, for which he had been seeking a partner who could provide the necessary capital to establish the operation. (T.75-80.) Mr. Brown was a thoroughbred racehorse owner who had the necessary capital and needed a person with Mr. Stuckey's skill and experience to care for, train, and race his horses. (T.75-80).

The parties agreed that appropriate land would be purchased on which a thoroughbred racing farm could be established. The Browns agreed to pay most of the cost of purchasing the land and building the barns, paddocks, and race tracks required for the farm. The Stuckeys agreed to help build and maintain the improvements, to operate the farm, and to perform the breeding, care, training, and racing of horses contributed to the partnership by the Browns. (R.VI, 5.) It was agreed that the Browns would keep all revenues from any purses from race winnings and horse sale proceeds from partnership horses, until the mortgage on the property was satisfied and the Browns recouped their initial investment in the land. (R.VI, 7.) Thereafter, the Stuckeys and the Browns were to split all such revenues and expenses fifty-fifty. (R.VI, 9.) The Stuckeys were to sustain themselves and the expenses of caring for partnership horses with revenues earned by them from caring for,

training, and racing non-partnership thoroughbred horses on the farm owned by them or by third party clients of the Stuckeys.

On August 19, 1991, a 151 acre tract of land was purchased by the Stuckeys and Browns as undivided co-owners of the property. (R.IX, 162-63; P.Ex 3; App.L.) The Stuckeys and the Browns were jointly obligated on the note and mortgage. (R.IX, 162-63; P.Ex 3.) Soon thereafter, construction of improvements necessary to operate the farm commenced, including hayfields, barns, paddocks, and training tracks. The Browns provided equipment and two workers to help construct the improvements. (T.282-89.) Mr. Stuckey also worked on construction of the improvements, assisted by his 16 year old son, Alex Stuckey, Jr. (T.282.) When sufficient improvements were completed in late 1981, the Stuckeys began training the partnership horses contributed by Brown, and also began developing their own non-partnership clientele, training horses owned by third parties. (T.772).

From 1981 through 1989, the Stuckeys contributed substantial expertise, time, work, and money to developing, improving and operating the Running Rose Farm business. The Stuckeys expended a total of $638,800.61 from their own funds in support of the Running Rose Farm business, of which $399,506 was allocated to the partnership and $237,567 to the non-partnership business. (T.253) (R.X, 135; P.Ex 13; App.H).

As to the partnership business, the Stuckeys paid Suwannee Valley Aviation for spraying the hay fields with fertilizer. (T.259.) They paid for repairs to the tractors. They paid for

putting in the well, pumps, and the septic tanks at the farm. (T.259.) The Stuckeys did most of the repairs themselves and paid for repairs that they could not do themselves. (T.259, 260)(R.X, 45-86; P.Ex10.) The Stuckeys repaired fences, mowed grass, and performed other general maintenance of the farm. (T.270.) They rented steam cleaners and steam-cleaned the barns. (T.270.) The Stuckeys fertilized, cut, and baled the hay to feed the horses. (T.287.) The Stuckeys paid for and supervised the blacksmiths, who clipped and shoed the partnership horses. (T.288-289.) The Stuckeys also paid the riders who exercised the partnership horses. (T.290-91).

The Stuckeys arranged and paid for the breeding of new colts from the partnership horses, as well as the care, training, and racing of these colts. (T.254-257.) The Stuckeys paid most of their own expenses when they took the partnership horses to be raced. (R.VI, 8.) During this period, the Stuckeys paid for equipment repairs, breeding fees, fertilizer, a blacksmith, insurance, sawdust, general repairs, maintenance, veterinarian bills, fuel, and equipment. (T.253).

The partnership horses brought in winning race purses and horse sale proceeds to the Running Rose Farm business. (R.X, 40-42; P.Ex.7; App.E.) The Browns made the mortgage payments from those revenues from 1981 until January 19, 1988, when the mortgage on Running Rose Farm was satisfied. (T.249-253)(R.X, 40-42; P.Ex7; App.E).

In early 1989, after the Running Rose Farm mortgage had been

satisfied, the Stuckeys sent the Browns a summary of expenses incurred for partnership horses. (T.285-286.) A dispute then arose between the Stuckeys and the Browns as to whether the terms of the oral partnership agreement required the Stuckeys and the Browns to split revenues and expenses 50/50 after the mortgage was satisfied from partnership revenues. (T.287.) The Browns reacted by digging trenches across the race track, knocking over the farm's fences with a front-end loader, and interfering with the Stuckeys' use of farm for training both partnership and non-partnership horses. (T.290).

From early 1989 up to the time of trial in December 1994, the Brown's obstructive acts continued. The Browns or their agents repeatedly dug trenches across the racetrack, which trenches the Stuckeys would repair, and which the Browns would dig again. (T.290.) The Browns built rails, (T.294, 306), stretched cables, (T.301-02), and erected fences, (T.302), across the racetrack on various occasions, then parked vehicles on the racetrack to prevent its use. (T.298.) Mr. Brown drove an All Terrain Vehicle along the track while the Stuckeys were trying to train horses, (T.358-359), erected dirt piles on the racetrack, (T.298), dumped garbage on the farm property, (T.296), moved the original starting gates on the track and rendered them inoperable. (T.300.) The Stuckeys purchased new starting gates, but the Browns moved them to prevent their use. (T.303).

The Browns continued these activities repeatedly for over three years despite court orders enjoining them from such

activities in January 1992, (R.X, 148-153; P.Ex 20; App.B), and February 1993, (R.X, 156-158; P.Ex 23; App.C).

In 1990, a colt died of colic at the Running Rose Farm, (T.496-508), and Mr. Brown accused Stuckey of killing the colt, put up a sign on the farm and put advertisements in the Horseman's Journal that a horse had been killed on the farm. (T.819-21.) Mr. Stuckey testified as to his humiliation, shame, and loss of reputation when people made statements to him such as "Well, is this a jailhouse, or horse farm, or what?" and the resulting loss of clients. (R.VI, 12.) The humiliation, shame and loss of reputation suffered by Mr. Stuckey from Mr. Brown's accusations, and publications about the horse being killed, and other obstructive activities by the Browns caused the Stuckeys' non-partnership business clients to remove their horses from the farm, and caused Mr. and Mrs. Stuckey severe emotional distress and deterioration of their physical health.

In 1982, the first full year of farm operation, the Stuckeys provided 600 training days to their clients' non-partnership horses. (R.X8,107; Pl.Ex 13; App.H.) The Stuckeys charged their non-partnership clients $25.00 per training day for each horse (T.262.) By 1988, the Stuckeys' non-partnership horse training business had grown more than 1000%, to 6,168 training days. (R.X8, 121; P.Ex 13; App.H.) During the two years before the Brown's obstructive activities began in early 1989, the Stuckeys' non-partnership business continued its dramatic growth. In 1987, the Stuckeys provided 4,307 non-partnership training days, a 53%

increase over 1986; and in 1988, the Stuckeys provided 6,168 training days for non-partnership horses, a 48% increase over 1987. (R.X, 105-138; P.Ex 13; App.H).

In 1987, the Stuckeys' non-partnership horse training revenue totalled approximately $90,220.00 (4,307 training days x $25.00 per day) while expenses allocated to non-partnership training totalled $64,375.00, leaving net earnings of $43,300.00, a 22% increase over 1986 (R.X,130; P.Ex13; App.H.) In 1988, revenues from their non-partnership horse training grew to $154,200.00 (T.894) (6,168 training days x $25.00 per day), while expenses allocated to non-partnership horse training in 1988 totalled $90,220.00), leaving net earnings of $63,980.00 (R.X, 131; P.Ex 13; App.H), representing a $20,680.00, or 48% increase in net earnings over 1987).

After the Browns began their obstructive activities in 1989, the Stuckeys' non-partnership business declined rapidly and dramatically. In 1989, the Stuckeys provided only 847 days of non-partnership horse training (R.X, 122; P.Ex 13; App.H.) By 1993, the Stuckeys were able to collect only $8,000.00 in revenue from their non-partnership business, representing approximately 320 training days. (T.894-895).

Mrs. Stuckey testified that the Browns' actions caused her significant emotional stress which caused her to see her physician, Dr. Barney Vanzant. (T.818-819, 821.) Dr. Vanzant testified as to the stress and health problems experienced by Mrs. Stuckey, (T.621-627), which he causally related to her problems with the Browns. (T.623-626.) Dr. Vanzant examined Mrs. Stuckey on December 19,

1990, found that she suffered from extreme nervousness and a rash due to stress from the situation with the Browns, and prescribed an anti-depression medication for her condition. (T.623-624.) Dr. Vanzant examined Mrs. Stuckey again on July 31, 1991, and again concluded that Mrs. Stuckey had experienced repeated and continuous emotional distress due to the continuing problems with the Browns. (T.624-626).

Mr. Stuckey was also treated by Dr. Vanzant as early as 1989 as a result of the problems with the Browns. (T.627-632.) Dr. Vanzant testified that Mr. Stuckey experienced significant stress due to the breakup of the partnership and problems with the Browns, which caused a nervous condition for which he prescribed anti-depression medication. (T.627.) Dr. Vanzant saw Mr. Stuckey on May 4, 1992 for complaints of skin trouble and concluded the skin problems resulted from stress caused by the situation with the Browns. Dr. Vanzant testified that the stress caused by the Browns' activities was a contributing factor in the onset and progress of Mr. Stuckey's cancer from which he died in October 1994. (T.629-630.) Dr. Vanzant explained that medical studies have linked stress to impairment of the immune system, thereby triggering the onset of cancer (T.630-631), and that repeated stress, such as that suffered by Mr. Stuckey from the Browns' activities, caused the cancer to manifest itself 10-15 years earlier than it probably would have under normal circumstances (T.633.) Dr. Vanzant's testimony was unrefuted.

The Stuckeys' claims against the Browns proceeded to trial in

December 1994, resulting in a jury verdict for the Stuckeys on December 16, 1994. The trial judge later granted Defendants' Motion for New Trial, from which an appeal was taken. (R. IV, 47-51, 52-57.) The First District Court of Appeal reversed the order granting defendants' motion for new trial. Stuckey v. Brown, 688 So. 2d 438 (Fla. 1st DCA 1997), on reh'g 695 So. 2d 796. On the Browns' petition, this Court accepted jurisdiction pursuant to Florida Rule of Appellate Procedure 9.320.

SUMMARY OF ARGUMENT

In reviewing the order granting the defendants' motion for new trial, the district court followed this Court's guidance and gave substantial deference to the actions of the trial judge. Pursuant to this Court's instructions in Laskey v. Smith, 239 So. 2d 13, 14 (Fla. 1970), and subsequent cases, the district court looked to the record in search of support for the trial judge's findings. Contrary to the contentions of the petitioners, the district court did not reverse based simply on the existence of evidence in the record to support the jury verdict.

In the instant case, the trial judge ordered a new trial based on his conclusion that there was no evidence to support the damages awarded. The district court's proper review of the record revealed the error of the trial judge's conclusions. Although the trial judge initially concluded that the jury was "either [sic] (a) deceived as to the force and credibility of the evidence, or (b) influenced by considerations outside the record; i.e., bias or prejudice; or (c) both," (R. 47.), the remaining text in the order granting defendants' motion for new trial, as well as the evidence in the record, contradicts the trial judge's conclusions.

By making patently erroneous conclusions such as, "the damages awarded . . . simply is [sic] not sustainable by any reasonable view of the evidence," and "the evidence was silent as to [Mrs. Stuckey's] personal expected profits," and "[t]here was not evidence as to loss or suffering resulting from the defamation," the trial judge demonstrated that he abused his discretion.

Reasonable persons could not agree with the trial judge that the evidence was "silent" or that "there was not evidence" on these issues. The district court had no choice but to reverse and remand.

ARGUMENT

I. IN ITS REVIEW OF THE TRIAL JUDGE'S ORDER GRANTING A NEW TRIAL, THE DISTRICT COURT APPLIED THE CORRECT LEGAL STANDARD AS ENUNCIATED BY THIS COURT.

The applicable standard of review for a trial judge's order granting a new trial is whether the trial court abused its discretion. Smith v. Brown, 525 So. 2d 868 (Fla. 1988). This standard differs from the standard to be applied by the trial judge in determining whether to grant a new trial. Poole v. Veterans Auto Sales & Leasing, 668 So. 2d 189, 191 (Fla. 1996). In Smith v. Brown, this Court summarized the distinction between these two standards, as well as the respective roles of (1) the jury, (2) the trial judge, and (3) the reviewing court:

> Clearly, it is a jury function to evaluate the credibility of any given witness. Moreover, the trial judge should refrain from acting as an additional juror. Nevertheless, the trial judge can and should grant a new trial if the manifest weight of the evidence is contrary to the verdict. In making this decision, the trial judge must consider the credibility of the witnesses along with the weight of all of the other evidence. The trial judge should only intervene when the manifest weight of the evidence dictates such action. However, when a new trial is ordered, the abuse of discretion test becomes applicable on appellate review. The mere showing that there was evidence in the record to support the jury verdict does not demonstrate an abuse of discretion.

Smith v. Brown, 525 So. 2d 868 (emphasis in original) (citations omitted).

This Court's most recent decision on this issue appears to be E.R. Squibb & Sons, Inc. v. Farnes, 697 So. 2d 825 (Fla. 1997), quashing Farnes v. E.R. Squibb & Sons, Inc., 667 So. 2d 1004 (Fla.

3d DCA 1996). In Farnes, the district court improperly reversed a trial judge's order granting a new trial, having concluded erroneously that the trial court abused its discretion. The issue in Farnes was whether an influenza vaccine's package insert adequately warned that immunization carried an increased risk of contracting a rare neurological disorder known as Guillain-Barré Syndrome (GBS). The jury found that the warning was inadequate, but the trial judge disagreed and ordered a new trial.

In his order granting the drug manufacturer's motion for new trial, the trial judge in Farnes specifically referred to the language of the package insert and noted that the "insert advises that in 1976, influenza vaccine was associated with an increased risk of recipients contracting GBS, but that such a connection has not been demonstrated in recent years." The trial judge also pointed out that the parties' expert witnesses were in conflict over the adequacy of the vaccine's package insert.

In reversing the trial judge's order granting a new trial, the district court in Farnes mistakenly reasoned that "[t]rial judges do not have the discretion to substitute their judgment for that of the jury in regard to conflicting testimony of expert medical witnesses." 667 So. 2d at 1005 (emphasis added). This Court quashed the district court's decision in Farnes and pointed out that although there was conflicting expert testimony, evidence in the record supported the trial judge's ruling, because there was no evidence converting the statement in the package insert that "flu vaccines used since 1976 had not been associated with an increased

risk of GBS." E.R. Squibb & Sons, Inc. v. Farnes, 697 So. 2d 825, 827-28 (Fla. 1997). Although evidence also supported the jury's verdict, this Court explained that if reasonable persons could agree with the trial judge, then the order granting the new trial was not an abuse of discretion. 697 So. 2d at 826-27.

In the instant case, the district court relied on this Court's decision in Smith v. Brown, noting that the mere existence of evidence to support the jury's verdict would not prove that the trial judge abused his discretion. Stuckey, 695 So. 2d at 796-97. The trial judge's order concludes in numerous places that evidence did not exist to support the jury's verdict, but the record belies these conclusions, demonstrating that the trial judge abused his discretion.

Although the trial judge has broad discretion in granting motions for new trial, this discretion is not unbounded. In Wackenhut Corp. v. Canty, 359 So. 2d 430 (Fla. 1978), this Court cautioned that even though the trial judge occupies a better vantage point than the appellate court with respect to ruling on the correctness of the jury's verdict, this superior vantage point does not give a trial judge "unbridled discretion to order a new trial." Wackenhut, 359 So. 2d at 434. As a means of reining in this discretion, the Court explained that "[o]rders granting motions for new trials should articulate reasons for so doing so that appellate courts may be able to fulfill their duty of review by determining whether judicial discretion has been abused." 359 So. 2d at 435.

In Wackenhut, this Court held that the trial judge's order was deficient for want of references to the record that would support his conclusion. 359 So. 2d at 435. Additionally, this Court's independent review of the record produced no evidence in support of the trial judge's order.[1] 359 So. 2d at 435. In Baptist Memorial Hospital, Inc. v. Bell, 384 So. 2d 145 (Fla. 1980), this Court held that the trial judge was required to give "express reasons which will support his finding that the verdict is either against the manifest weight of the evidence or was influenced by consideration of matters outside the record." 384 So. 2d at 146.

In Laskey v. Smith, 239 So. 2d 13 (Fla. 1970), this Court also held that:

> The record must affirmatively show the impropriety of the verdict or there must be an independent determination by the trial judge that the jury was influenced by considerations outside the record. In other words, the trial judge does not sit as a seventh juror with veto power. His setting aside a verdict must be supported by the record, as in Cloud v. Fallis, Fla.1959, 110 So.2d 669, or by findings reasonably amenable to judicial review. Not every verdict which raises a judicial eyebrow should shock the judicial conscience.

Laskey, 239 So. 2d at 14 (emphasis added). In the instant case, the trial judge's reasons for ordering a new trial, were erroneous and not supported by the record. The district court recognized

---

[1] Although Wackenhut involved an order granting a new trial as an alternative to remittitur, the Court's prior and subsequent decisions made clear that the rule announced in Wackenhut applied equally to orders for new trial that did not involve remittitur. Baptist Memorial Hospital, Inc. v. Bell, 384 So. 2d 145 (Fla. 1980); Laskey v. Smith, 239 So. 2d 13 (Fla. 1970).

that this demonstrated an abuse of discretion and properly reversed.

In St. Regis Paper Co. v. Watson, 428 So. 2d 243 (Fla. 1983), this Court was faced with a similar situation to that in the case at bar. The trial judge's order in St. Regis contained only "legal reasoning and general conclusions," which this Court found insufficient to meet the requirements of Wackenhut. Although the order in the instant case is more wordy than that in St. Regis, the additional verbiage did not support the trial judge's general conclusions that the jury's verdict was against the manifest weight of the evidence. The district court recognized that the trial judge's order was the product of incorrect legal reasoning and unsupported conclusions. As such, the order was properly reversed.

II. THE DISTRICT COURT PROPERLY REVERSED THE TRIAL JUDGE'S ORDER GRANTING A NEW TRIAL WHERE THE ORDER DEMONSTRATED THAT THE TRIAL JUDGE ABUSED HIS DISCRETION.

Where an order granting a new trial is deficient and the record fails to support the trial judge's conclusions, the appellate court should reverse. Adams v. Wright, 403 So. 2d 391, 395 (Fla. 1981). In the instant case, the trial judge granted the Brown's motion for new trial on the grounds that "the damages awarded are contrary to the manifest weight of the evidence and the instructions of law given the jury to guide it in its

deliberations."[2] (R.IV, 47-51; App.K.) The Order for New Trial specifically addressed only the compensatory damages awarded for intentional interference with a business relationship, defamation, intentional infliction of emotional distress, and allocation of partnership interest in real property.

The trial judge did not explain how his conclusions were supported by the record. Instead, the judge merely stated that there was insufficient evidence to support the damage awards. When compared with the record, it becomes clear that the trial judge's express findings as to his basis for ordering a new trial were erroneous.

A. <u>There Was No Legal or Factual Basis for the Trial Judge's Conclusion that the Damages Awarded by the Jury for Defamation Were Unsupported by the Evidence</u>.

In his order granting the Browns' motion for new trial, the trial judge erroneously concluded that, "<u>no reasonable evidence was adduced</u> to support such award [of damages for defamation] other than that concerning 'loss of business' . . . ." (R. 49 (emphasis

---

[2] The order granting a new trial was not founded on any determination that the jury was influenced by consideration of matters outside the record. In the district court, the Browns did not argue that the jury was influenced by consideration of matters outside the record. The district court noted in its opinion that any alleged juror misconduct was not a basis upon which the trial court ordered a new trial. <u>Stuckey v. Brown</u>, 688 So. 2d 438, 440 (Fla. 1st DCA 1997). Similarly, in the Browns' Briefs to this Court on jurisdiction, they did not raise the juror misconduct as an issue. In their Brief to this Court on the merits, the Browns did not argue that the jury was influenced by consideration of matters outside the record; instead, the Browns continued to argue only that the district court applied the wrong standard with regard to the manifest weight of the evidence. (Br. 18, 22.) The Browns have abandoned the issue of any alleged juror misconduct.

added).) This conclusion demonstrates that the trial judge abused his discretion by failing to correctly apply the law in his new trial order. The law is clear that there need be no evidence which assigns an actual dollar value to an award of damages for defamation.

In Gertz v. Robert Welch, Inc., 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974), the United States Supreme Court held that:

> Under the traditional rules pertaining to actions for libel, the existence of injury is presumed from the fact of publication. Juries may award substantial sums as compensation for supposed damage to reputation without any proof that such harm actually occurred.... Suffice it to say that actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering.... [T]here need be no evidence which assigns an actual dollar value to the injury.

Gertz, 418 U.S. at 349-350, 94 S.Ct. at 3011, 41 L.Ed.2d at 810-11 (emphasis added), quoted and adopted in Rety v. Green, 546 So. 2d 410, 420 (Fla. 3d DCA), rev. denied 553 So. 2d 1165 (Fla. 1989).

In Miami Herald Pub. Co. v. Brown, 66 So. 2d 679, 681 (Fla. 1953), this Court held: "[W]e are fully aware of the inaccuracy in fixing general damages for injury to reputation, feelings and the like because the jury must, from the very nature of these elements, engage in speculation." In Finch v. City of Vernon, 877 F.2d 1497, 1504 (11th Cir. 1989), the court found: "[Defendant] argues that [Plaintiff] failed to present evidence of financial loss caused by the defamation. This argument has no merit because [Plaintiff] did not need to show actual financial loss."

Where a private individual defames another private individual

and the statement tends to injure the individual in his trade or business, the statement is considered defamation per se. Krohngold v. National Health Ins. Co., 825 F.Supp. 996, 998 (M.D. Fla. 1993). Under such circumstances the defamed party is entitled to a conclusive presumption of damage. As stated by this Court:

> [W]ords amounting to a libel per se necessarily import damage and malice in legal contemplation, so these elements need not be pleaded or proved, as they are conclusively presumed as a matter of law.

Mid-Florida Television Corp. v. Boyles, 467 So. 2d 282, 283 (Fla. 1985)(quoting Layne v. Tribune Co., 108 Fla. 177, 146 So. 234 (1933). Although this Court removed the presumption in cases against the public media under the dictate of the Gertz decision, it did not remove the presumption as to private individuals and therefore, the presumption remains applicable in the case at bar. Id. The Stuckeys testified that the Browns posted signs and ran advertisements maliciously and falsely accusing the Stuckeys of being horse killers. (T.820-21.) This embarrassed the Stuckeys, hurt their feelings, and harmed their reputations locally and "all over the country." (T.820-21.)

In the case at bar, the trial judge clearly misapplied the law when he concluded that "[t]here was not evidence as to loss or suffering resulting from defamation for that period of time that would reasonably equate to $50,000 . . . ." (R. 49.) The trial judge abused his discretion because the law is that there need be no evidence which assigns an actual dollar value to an award of

damages for defamation.[3] The Stuckeys presented evidence as to Mr. Stuckey's loss of reputation and standing in the horse trading community, humiliation, mental anguish and suffering, arising from the Browns' defamatory statements. The trial judge's baseless conclusion that there is no evidence on this issue is erroneous.

B. The Record Demonstrates That the Trial Judge Abused His Discretion When He Concluded that the Damages Awarded for Intentional Interference with Business Relationship Were "Not Sustainable By Any Reasonable View of the Evidence".

In his order granting the Browns' motion for new trial, the trial judge erroneously concluded that, "On Plaintiffs' claim for intentional interference with business relationship, the compensatory damages awarded . . . simply is [sic] not sustainable by any reasonable view of the evidence." (R. 49.) The judge reached this conclusion by contending that an award of $253,500.00 to the Estate of A.P. Stuckey seemed inappropriate "when compared to prior earnings and 'best-scenario' projected increases." (R.IV, 47-51; App.K.) The trial judge also concluded that the sum of

---

[3] Although the question of whether evidence existed to support the jury's verdict normally would be irrelevant to the review of an order granting a motion for new trial, in this instance there was evidence that specifically refuted the trial judge's conclusion that no such evidence existed. Mrs. Stuckey testified as to how Mr. Stuckey worked for years to develop a reputation for skill and experience that brought him respect in the world of horse training and racing and led to his success in attracting non-partnership clients. (T-758,772). Mr. Stuckey, during his video deposition, described the adverse effects of Mr. Brown's false and malicious statements that a horse was killed in connection with Mr. Stuckey's operation of Running Rose Farm. (R.XI, 12; P.Ex 42). The record established the impairment of plaintiffs' reputation and standing in the community, as well as the resultant personal humiliation, mental anguish and suffering.

$130,500.00 awarded to Sarah Stuckey on her claim was not supported because the record lacked evidence "as to her personal expected profits in the business, absent the efforts of her husband." (R.IV, 47-51; App.K).

Damages for intentional interference with a business relationship can be recovered for all harm reasonably flowing therefrom, including lost earnings and profits. Insurance Field Services, Inc. v. White & White Inspection and Audit Service, Inc., 384 So. 2d 303, 308 (Fla. 5th DCA 1980); Fla. Std. Jury Instr. (Civ.) MI 7.7. In establishing lost earnings or profits, the damages need not be proven with certainty. Instead, it need only be shown that a reasonable basis exists for the damages. Id. In Insurance Field Services the court held:

> Uncertainty as to the amount of damages or difficulty in proving the exact amount will not prevent recovery where it is clear that substantial damages were suffered and there is a reasonable basis in the evidence for the amount awarded. Ultimately the degree of certainty simply requires that the mind of a prudent impartial person be satisfied with the damages.

Id. (quoting Adams v. Dreyfus Interstate Development Corp., 352 So. 2d 76 (Fla. 4th DCA 1977) (reinstating jury verdict for lost profits based upon testimony of Plaintiff)). The Insurance Field Services court applied that standard to affirm damages awarded for intentional interference with a business relationship based upon evidence that the plaintiff was an on-going enterprise with good will and an anticipation of earnings growth. Id.

The testimony and exhibits in evidence in the instant case established that the Stuckeys ran an on-going and growing business

of training non-partnership horses from 1981 through 1988. (R.VI, 4.) A.P. Stuckey testified that he and his family began training non-partnership horses at the Running Rose Farm in 1981. (R.VI, 4) The Stuckeys' business records, which were summarized in P.Ex 13[4], demonstrate that the non-partnership training business grew significantly from 1981 through 1988. (R.X, 105-38; P.Ex 13; App.H.) From 1982, the first full year of operation, through 1988, the Stuckeys' non-partnership horse training business grew over 1000%, from 600 training days in 1982 to 6,168 in 1988. (R.X, 107,121; P.Ex 13; App.H.) In 1988 the business grew 43% in one year, from 4,307 training days in 1987 to 6,168 in 1988. (R.X, 116,119; P.Ex 13; App.H.) Every indicator suggested in 1988 that the Stuckeys' business would continue to grow over the next several years. (T.895).

The profitability of the Stuckeys' non-partnership training business also grew as their client base increased. In 1987, the Stuckeys' non-partnership horse training revenues totalled approximately $90,220 (4,307 training days x $25 per day) while expenses allocated to non-partnership training totalled $64,375, leaving earnings of $43,300, a 22% increase over 1986. (R.X, 130; P.Ex 13; App.H.) In 1988, the revenue from non-partnership horse training totalled $154,200 (6,168 training days x $25 per day)

---

[4] The validity, from a cost accounting standpoint, of the summaries of training day calculations and financial allocations from the Stuckeys' business records in Plaintiffs' Exhibit 13 was substantiated by Plaintiffs' accounting expert, Donald Foreman, C.P.A. (T.376-90), and Mr. and Mrs. Stuckey's son, Alex Stuckey, who had first-hand knowledge of the Stuckey's business, (T.268-69).

(T.894), while expenses allocated to non-partnership training totalled $90,220, leaving a earnings of $63,980, a $20,680 or 48% increase over 1987 (R.X, 131; P.Ex 13; App.H).[5]

Beginning in 1989, that business was substantially injured and soon nearly destroyed by the Browns' interference and obstructive actions, which resulted in substantial continuing and increasing economic loss by the Stuckeys between 1989 and October 1994.

At trial, Plaintiffs established an ongoing list of intentional acts intended by the Browns to ruin the Stuckeys' business and cause them extreme emotional and physical distress far beyond Browns' defamatory statements and publications about a horse being killed on the farm, which was the sole basis for the defamation claim. Alex Stuckey testified that the Browns started "tearing up the place" by "digging trenches across the racetrack" and using a front-end loader that "knocked over all the fences" (T.290), which destruction was depicted in photographs entered into evidence as Plaintiff's Exhibit 16. (R.X, 141; T.294.) He described a rail built across the racetrack (T.294, 306), garbage dumped on the property (T.296), vehicles parked in the racetrack to prevent its use (T.298), removal of the racetrack railing (T.298), dirt piles erected on the racetrack (T.298), trenches dug across the racetrack at various times (T.299-300, 305-06), moving of the

---

[5] In their brief, the Browns argue that "Plaintiffs' tax returns" do not support the jury's award for intentional interference with business relationship. (Br. 19-21.) Tax returns alone are not necessarily dispositive as to profit and loss. See, e.g., Trailer Ranch, Inc. v. Levine, 523 So. 2d 629 (Fla. 4th DCA 1988) (stating that under certain circumstances, "[t]ax returns are not probative of income or 'profit' of [a] business.")

starting gates (T.300, 303), stretching cable across the racetrack on various occasions (T.301-02), building a fence across the racetrack (T.302), and driving an ATV vehicle on the racetrack preventing the Stuckeys from training horses. (T.358-59).

The Stuckeys petitioned the circuit court to stop those activities; and on May 5, 1989, the court issued an order prohibiting the Browns from interfering with the "physical character of the property or improvements thereon and their use as a horse training facility." (R.X, 146-47; P.Ex 19; App.A.) However, the Browns' activities continued and on February 13, 1992, the court found the Browns willfully violated "the court's previous order as to interfering with the farm and therefore held the Browns in contempt. (R.X, 148-53; P.Ex 20; App.B.) The Browns continued their obstructive acts, and on February 2, 1993, they were again held in contempt of court for "willfully and contemptuously" violating the court's prior orders. (R.X, 156-58; P.Ex 23; App.C).

Because of the Brown's intentional, malicious, and obstructive activities that began in early 1989, the Stuckeys' non-partnership clients removed their thoroughbred race horses from the Running Rose Farm. (T.305-306.) As a result, the Stuckeys were only able to provide 847 days of non-partnership training in 1989. (R.X, 122; P.Ex13; App.H.) By 1993, the Stuckeys collected only $8,000 in revenue, representing only 320 training days from their non-partnership business, although much of their overhead and business expenses continued. (T.894-95).

The jury, based on that evidence, conservatively estimated the

earnings lost by Mr. and Mrs. Stuckey from 1989 to October 1994 to be a total of $253,500.00 for Mr. Stuckey's losses and $130,500.00 for those of Mrs. Stuckey, for a total of $384,000.00. If the jury had assumed the Stuckeys' business would have had zero growth from 1989 to October 1994, it could still have calculated expected earnings of $367,885 (1988 profit of $63,980 x 5 3/4 years). On the other hand, if the jury assumed that the Stuckeys' earnings would have continued to grow at a 48% rate as in 1988, earnings through October 1994 could have been as much as $1,771,773. These figures established a broad range of damages within which the jury properly calculated lost earnings at $384,000, only slightly more than a no growth calculation would have produced, and not in excess of "best scenario future earnings" as concluded in the trial judge's order.

The trial judge's order also stated that the jury verdict was not sustainable "as to [Sarah Stuckey's] personal expected profits in the business absent the efforts of her husband." (R.IV, 47-51; App.K.) However, the jury was specifically instructed to award damages for only the period that A.P. Stuckey was alive, through October 2, 1994. Therefore, the jury did not consider any damages for Mrs. Stuckey absent the presence and efforts of her husband, and must have based its verdict on the evidence of her substantial contributions to the non-partnership business of which she was a part owner with her husband. (T.234, 771-73). Mrs. Stuckey's efforts included working with the horses, maintaining the books, and keeping records. (T.770.)

A review of the record evidence shows that the jury awarded economic damages for intentional interference with a business relationship of less than 25% of an amount that could have been justified under the evidence by projecting growth between 1986 and 1988 forward from 1989 to October 1994. All of this is the evidence that the trial judge contended did not exist.

The trial judge did not adequately explain in his order the basis for his conclusion that the manifest weight of the evidence was against the jury's award of damages for intentional interference with business relationship. The trial judge erroneously concluded that (1) the damages awarded for Mr. Stuckey's losses were "not sustainable by any reasonable view of the evidence," and (2) "the evidence was silent" as to Mrs. Stuckey's losses. The fact that record shows the existence of detailed and uncontroverted on this evidence demonstrates that the trial judge abused his discretion.

C. The Record Demonstrates That the Trial Judge Abused His Discretion When He Rejected the Jury's Award for Intentional Infliction of Emotional Distress, Based on an Erroneous Conclusion That it was "Inseparable" from the Claims for Defamation and Intentional Interference with Business Relationship.

This Court recognized the independent tort of intentional infliction of emotional distress in Metropolitan Life Ins. Co. v. McCarson, 467 So. 2d 277 (Fla. 1985). In the order granting defendant's motion for new trial, the trial judge arbitrarily concluded that the evidence on the claim for intentional infliction of emotional distress was "inseparable" from that on the claims for interference with a business relationship and defamation. (R.IV,

47-51; App.K).

Florida courts have recognized that damages resulting from a defendant's intentional infliction of emotional distress are inherently difficult to measure. In Smith v. Telophase National Cremation Society, Inc., 471 So. 2d 163 (Fla. 2d DCA 1985), the court held as follows:

> Since appellant's damages grow out of the newly recognized tort of intentional infliction of emotional distress, they are by their very nature difficult, if not impossible, to measure. For the trial judge to state a mere conclusion that it is contrary to the manifest weight of the evidence or that it is shocking to the judicial conscience without showing specifics, when six jurors have found otherwise, we think is error.

Id. Therefore, juries in Florida are granted wide latitude and discretion in determining the amount of emotional distress damages that are fair and just in light of the circumstances presented by the evidence. Id.

Moreover, the proof and damages for intentional infliction of emotional distress differ from those for defamation and for intentional interference with business relationship. Although some of the elements of liability and damages for each of those torts may overlap, the causes of action are not identical. Additionally, the evidence on the defamation claim involved only the Browns' billboard and horse journal advertisements that the Stuckeys killed horses. The evidence of the remainder of the Browns' outrageous and contemptible acts supported the claims for intentional interference with a business relationship and intentional infliction of emotional distress - but the elements of damages on these two torts were different. Damages for intentional

interference with a business relationship compensated for business losses, while damages for intentional infliction of emotional distress were awarded to redress the Stuckeys' emotional and physical injuries suffered at the hands of the Browns between 1989 and October 1994.

Prior to his death, A.P. Stuckey testified that the Browns' actions placed him under a great deal of stress, particularly when Mr. Brown came to the farm with the express purpose of "just to aggravate you." (R.VI, 14-15; R.X, 14; P.Ex 42). Additionally, as set forth in section II.C, above, the Browns engaged in extensive repeated activities designed solely to distress the Stuckeys. Mrs. Stuckey testified that following these incidents, her husband suffered "horrible stomach cramps" and that he became depressed and upset. (T. 818-19, 821).

Dr. Barney Vanzant, the Stuckeys' family physician, testified to the stress and health problems that the Stuckeys endured as a result of the Brown's activities. Concerning Mrs. Stuckey, Dr. Vanzant testified to treating her on several occasions for health problems caused by stress experienced due to the activities of the Browns. (T.621-27.) On December 19, 1990, Dr. Vanzant treated Mrs. Stuckey for a skin rash and nervousness, for which he prescribed anti-depressant medication. (T.623-24.) Dr. Vanzant also treated Mr. Stuckey for medical problems caused by the activities of the Browns. (T.627-633.) This included stress-related skin rashes and premature onset of cancer. (T.627-633.)

The Order Granting Defendants' Motion for New Trial does not

question the probative value or credibility of this evidence. Instead, the Order rejects the jury's award of compensatory and punitive damages for intentional infliction of emotional distress, solely on the conclusion that such evidence was "inseparable" from the evidence on the other claims, which conclusion has no basis in the record.

The unrefuted testimony of the Stuckeys and of Dr. Vanzant established that Mr. and Mrs. Stuckey endured physical pain and suffering, inconvenience and loss of enjoyment of life, all of which were unique to the emotional distress claim. Also, the jury was not instructed to award economic damages for lost earnings on the emotional distress claim. In contrast, the damages awarded for intentional interference with a business relationship were purely economic for lost earnings. Thus, although some of the Browns' conduct may support liability on both claims, the elements of damages for each are totally independent.

The defamation claim was also separate and distinct from the emotional distress claim as to both liability and damages. The only potential for overlap on the damages awarded for those claims involves the element of mental anguish. However, defamation uniquely allows damages for shame, humiliation, hurt feelings and loss of reputation. The emotional distress claim uniquely allows damages for pain and suffering, inconvenience and loss of enjoyment of life.

No reasonable person could agree with the trial judge's conclusion that the evidence for intentional infliction of

emotional distress was "inseparable" from the evidence adduced for defamation and intentional interference with business relationship, and that conclusion clearly demonstrates an abuse of discretion.

D. The Trial judge Abused his Discretion in Restricting the Partition of the Property to Only the "Cash Funds" Involved.

In the order granting defendants' motion for new trial, the judge concluded that the jury's verdict was against the manifest weight of the evidence because "the jury's allocation of equity in the partition of lands of 65% in favor of Plaintiffs where the evidence reflected that the cash funds used to purchase the land and construct much of the improvements thereon flowed from the pockets of the Defendants." (R.IV, 47-51; App.K (emphasis added).)

The verdict form and the jury instructions both allowed the jury to determine the parties' respective interests based on the money and efforts contributed by each:

> The issue on this claim that you are to decide is what percentage interest in the land and improvements is attributable to the money and efforts of the Browns on the one hand and what percentages attributable in the money and efforts of the Stuckeys on the other hand.

(T.2106-08) (emphasis added). The order granting the motion for new trial shows that the trial judge failed to consider the legal standard upon which he charged the jury. The jury was instructed to determine the parties' interests by evaluating the "money and efforts" that each had put forth. In his new trial order, the judge relied solely on "the cash funds used to purchase the land and construct much of the improvements."

Certain facts regarding this issue were not disputed. Both the Stuckeys and the Browns are joint owners of the land. (R.IX, 162-63; P.Ex 3.) Both the Stuckeys and the Browns were parties to the contract to purchase the land. (R.X, 01-39; P.Ex 6.) The land was purchased for the principal amount of $152,230.00. (R.X, 01-39; P.Ex 6.) The Stuckeys paid the closing costs. (T.238,768.) The Browns made the initial down payment for the land of $73,000.00. (R.X, 01-39; P.Ex 6.) A note and mortgage for the remaining principal amount of $77,230.00 was signed by the Browns and Stuckeys, who were both obligated under the mortgage to make payments thereon. (R.IX, 164-67; P.Ex 4.) Payments were made on the mortgage by Brown from farm partnership revenues, and a Satisfaction of Mortgage was executed on January 20, 1988. (R.X, 43; P.Ex 8.) Although the realty was purchased on the basis of a "50/50" ownership with respect to each couple, the land was contributed by both couples to the partnership and became an asset of the partnership. On the trial judge's instruction, the jury determined each parties' respective interest in the partnership and partnership assets based on their respective contributions of "money and effort."

The issue for the jury was to determine the respective partnership interests based on the relative contribution, of money and effort, by the Browns and the Stuckeys from 1981 until the partnership was dissolved in early 1989. The Stuckeys contended, the jury found, and the trial judge did not disturb the jury's finding, that a partnership agreement existed between the Stuckeys

and the Browns (R.IV, 12-15; App.I.) Under that agreement, the mortgage on the land would be satisfied from revenues generated by the partnership from winning race purses and the sale of partnership horses. (T.773-74.) The Browns were to initially retain the race and sale revenues, with which they would make payments on the mortgage. (R.XI, 6-8; P.Ex. 42.) These revenues are summarized in Plaintiffs' Exhibit 7 (R.X, 40-42; App.E), and are shown therein to correspond with the mortgage payments made from the Brown accounts. Accordingly, the evidence submitted demonstrated that the mortgage was satisfied by moneys generated from partnership business and that the Browns received full return of their financial contributions for the purchase of the land.

Soon after the land was purchased in 1981, construction began on the improvements necessary to operate a thoroughbred race horse farm. The parties soon discovered that the racetrack encroached on a five acre tract of land, not part of the original land purchased. (T.280.) Mr. Brown told the Stuckeys that he would acquire the five acres for the partnership, and the jury determined that he did acquire that land for the partnership. (T.280); (R.IV, 12-15; App.I).

As construction continued, Mr. Brown provided the heavy machinery required and two workers. (T.282-83.) Mr. Stuckey supervised the work to ensure everything was built properly. Mr. Stuckey also worked himself, assisted by his son, Alex Stuckey, Jr. (T.282.) For the first three or four weeks, the Stuckeys and the two workers worked every day. (T.283.) Thereafter, the Stuckeys

worked every day and Browns' two workers came in on weekends to assist with the heavier work until construction was completed. (T.283).

When the initial improvements to the Running Rose Farm were completed, the expenses and efforts to operate the partnership business came principally from the Stuckeys. From 1981 until 1989, the Stuckeys paid for the feed for the partnership horses. (T.287.) The Stuckeys also planted, fertilized, cut, and baled the hay required by the partnership horses. (T.287.) The Stuckeys hired, supervised, and paid the blacksmiths necessary to clip and shoe the partnership horses. (T.288.) The Stuckeys retained and paid the veterinarian who cared for the horses. (T.289-90.) The Stuckeys paid for outside trainers of the partnership horses when necessary. (T.290-91.) The Stuckeys repaired the farm buildings, fences, and equipment themselves or paid for the repairs made by others when needed. From 1981 until 1989, the Stuckeys spent $638,800.61 of their own funds to operate and maintain Running Rose Farm (T.253), of which $399,506 was allocated to the partnership business. (R.X, 135; P.Ex 13; App.H.; T. 268-69.)

The Stuckeys never charged the partnership for their expenses or personal efforts. Pursuant to their partnership agreement, they planned to absorb the costs until the mortgage was satisfied from partnership revenues, after which they expected to split the partnership revenues and expenses with the Browns. (R.VI, 9.) When the mortgage was satisfied, the Browns refused to honor their agreement to share partnership expenses and revenues. The

Stuckeys, with the assistance of their accountant, Donald Foreman, calculated the value of the funds and services provided by them to assist the jury in evaluating the Stuckeys' relative contributions to the partnership. Plaintiffs' Exhibit 13 demonstrated to the jury contributions of personal effort in the farm ("sweat equity") of $131,155 for maintenance, repair, and general farm work from 1981 through 1989. (R.X, 105; P.Ex 13; App.H.) That exhibit also demonstrated the value of training and care of partnership horses (identified as "partnership cost savings" in P.Ex 13) provided by the Stuckeys by taking the number of training days provided to partnership horses and multiplying that by the $25 a day that the Stuckeys charged for non-partnership horses. The value of the horse training services from 1981 until 1989 would have been $1,009,450. (R.X, 135; P.Ex 13; App.H.) In total, the Stuckeys provided a calculation of their contributions to the Running Rose Farms partnership business from 1981 until 1989 of $1,487,383. (R.X, 135; P.Ex 13; App.H.)

In contrast, the Browns calculated their contributions at approximately $450,263.38. This figure represents the initial down payment on the land of $73,000 plus the total mortgage payments of $112,654.20. This figure also includes all the expenses - totaling $264,609.18 - testified to by Mr. and Mrs. Brown as being incurred by the Browns for the benefit of Running Rose Farm. (T.1156-57).

As the record demonstrates, both parties contested the contributions of the other. The Stuckeys contested whether some part of the expenses the Browns attributed to the Running Rose Farm

actually went to other farms where the Browns kept horses. The Browns contested the value of the Stuckeys' contributions. The trial judge abused his discretion by concluding that the "partition of lands should only be based on "the cash funds used to purchase the land and construct much of the improvements." (R. 50.) The jury was instructed to the contrary and the trial judge abused his discretion in ignoring his own instructions. The trial judge's ruling was contrary to the law. The district court reviewed the record and properly reversed the order granting defendants' motion for new trial.

CONCLUSION

The trial judge abused his discretion in granting the Browns' motion for new trial. The trial judge's order, despite its wordiness, failed to give a detailed analysis of the evidentiary basis for substituting the court's view of the facts for those of the jury. Accordingly, the Stuckeys respectfully request that this Court affirm the district court's decision and remand with directions to proceed with judgment in accordance with the jury's verdict.

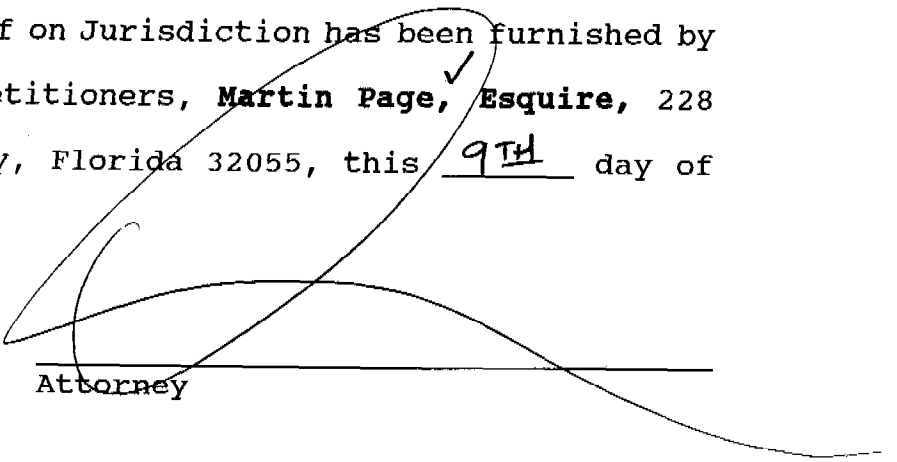
Respectfully submitted,

MARKS, GRAY, CONROY & GIBBS, P.A.

James C. Rinaman, Jr.
Florida Bar No.: 66270
Alan K. Ragan
Florida Bar No.: 821616
Post Office Box 447
Jacksonville, FL 32201
(904) 398-0900
Attorneys for Respondents,
Estate of A.P. Stuckey, Sr.
and Sarah Stuckey

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Respondents/Plaintiffs' Brief on Jurisdiction has been furnished by U.S. Mail to counsel for Petitioners, **Martin Page, Esquire,** 228 East Duval Street, Lake City, Florida 32055, this 9TH day of December, 1997.



Attorney