IN THE SUPREME COURT OF FLORIDA

CASE NO. 92,211

STATE OF FLORIDA
DEPARTMENT OF CORRECTIONS,

Petitioner,

vs.

JUNE CULVER AND GLENN CULVER,

Appellees.

_____/

On Discretionary Review from the District Court
of Appeal of Florida, First District

PETITIONER DOC'S INITIAL BRIEF ON THE MERITS (WITH APPENDIX)

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INTRODUCTION

This brief is filed by Petitioner, Florida Department of Corrections. The abbreviation "DOC" will be used to designate the Petitioner, and the symbol "App." will be used to designate the attached appendix.

The Second District's opinion in ***Hastings v. Demming, 682 So.*** 2d 1107 (Fla. 2d DCA 1996) will be designated as ***"Hastings I,"*** and this Court's opinion in ***Hastings v. Demming, 694 So.*** 2d 718 (Fla. 1997) will be designated as ***"Hastings II."***

STATEMENT OF THE CASE AND FACTS

In 1995, Respondent, Ms. June Culver, a prison psychologist, brought a negligence suit against her employer, the Department of Corrections (DOC), in the Circuit Court of the Fourteenth Judicial Circuit, in and for Jackson County. (App. 3) Respondent alleged that while working at the prison, she was attacked and injured by an inmate due to the negligence of prison security officers. (App. 7, ¶ 22) Respondent further argued that since the officers were assigned primarily to unrelated works, she was not limited to only receiving workers' compensation benefits, but could also sue DOC through its officers in tort. (App. 4, ¶ 6)

DOC subsequently moved for summary judgment on the basis that Respondent and the officers were not assigned primarily to

unrelated works, and therefore workers' compensation immunity barred the action. (App. 8) The facts presented to the trial court on the motion for summary judgment regarding the job descriptions and work responsibilities of Respondent and the correctional officers were not disputed. ***Department of Corrections v. Culver*** (1st DCA, December 31, 1997)(App. 1-2).

The sole issue argued on summary judgment was whether, as a matter of law, Respondent and the correctional officers whom she blamed for not preventing the attack were assigned primarily to unrelated works, such that an exception could be made to the officers' and DOC's workers' compensation immunity. ***Id.*** (App. 1) The trial court denied DOC's motion. (App. 10)

DOC appealed the order to the First District under Rule ***9.130(a)(3)(C)(vi), Fla.R.App.P.,*** which allows for the appeal of a non-final order which determines that, as a matter of law, a party is not entitled to workers' compensation immunity.

Soon after all briefs were filed with the First District, but prior to oral argument, this Court handed down its opinion in ***Hastings v. Demming (Hastings II),*** which commented that:

> Nonfinal orders denying summary judgment on a claim of workers' compensation immunity are not appealable unless the trial court order specifically states that, as a matter of law, such a defense is not available to a party.

694 So. 2d 718, at ***720*** (Fla. 1997).

The trial court's order merely stated that DOC's motion for summary judgment was "denied" without elaborating whether it was denied "as a matter of law." (App. 10)

The First District ordered DOC to show cause why its appeal should not be dismissed in light of the above comment in ***Hastings II.*** (App. 11) DOC argued that the comment was inconsistent with this Court's affirmation of ***Hastings I,*** where the Second District looked beyond the face of a generally-worded order to the record to determine whether there were any material facts in dispute.

The First District dismissed DOC's appeal, opining that although the record revealed no material facts in dispute and the immunity issue seemed ripe for review, the court had no choice but to dismiss the appeal based upon the supreme court's decision in ***Hastings II.*** (App. 2) However, based on the arguments made in Culver and a related case, ***Martin Electronics v. Glombowski and Phillips,*** 22 Fla.L.Weekly D2054 (Fla. 1st DCA, Aug. 26, 1997), the First District certified the following question to be one of great public importance:

> IN DETERMINING THE APPEALABILITY OF A NONFINAL ORDER DENYING A MOTION FOR SUMMARY JUDGMENT BASED ON WORKERS' COMPENSATION IMMUNITY, IS THE DISTRICT COURT OF APPEAL RESTRICTED TO LOOKING ONLY AT THE ORDER ON APPEAL OR MAY THE DISTRICT COURT OF APPEAL REVIEW THE RECORD IN THE MANNER DESCRIBED IN *HASTINGS V. DEMMING, 682 So.* 2d 1107 (Fla. 2d DCA 1996)?

DOC filed notice of its intent to invoke the discretionary jurisdiction of this Court on January, **13, 1997.** On January **26,** 1997, this Court entered an order postponing jurisdiction and allowing the submission of briefs on the merits.

SUMMARY OF ARGUMENT

The First District has jurisdiction to review the trial court's order denying DOC's Motion for Summary Judgment based on workers' compensation immunity under the jurisdictional test fashioned by the Second District in ***Hastings*** I, and affirmed by this Court in ***Hastings II.***

Under Rule 9.130(a) **(3)** (C)(vi), Fla.R.App.P., a nonfinal order determining that a party is not entitled to workers' compensation immunity is appealable to the extent that the court's decision turned on an issue of law, as opposed to an issue of fact. Under the ***Hastings*** I jurisdictional test, when a district court is faced with a nonfinal order which merely states "denied" without elaboration, the appellate court may review the record in connection with the motion for summary judgment to discern whether the motion was denied as a matter of law or of fact.

The present case meets this test; the First District reviewed the record and was able to discern that there were no material issues of fact raised in connection with the motion

for summary judgment, and the trial court was in position to make a determination of the workers' compensation immunity as a matter of law.

Although this Court made the comment in the ***Hastings 31*** opinion, that the district courts should not grant an appeal if the nonfinal order does not specifically state on its face that it's denial was made as "a matter of law," it is unclear whether this Court intended to actually create a new requirement. The comment runs counter to the main opinion in ***Hastings II*** which affirms the jurisdictional test in ***Hastings I,*** as well as the body of law on this appellate rule. Furthermore, the comment is outside the scope of both the certified conflict and the certified question that was present to the court for review.

Language of an order should not be the sole determinant of its appealability. Whatever judicial economy is gained by denying an appeal because an order lacks appropriate language is negligible, and outweighed by the public policy interest in protecting parties' immunity from suit under workers' compensation law. Placing form over substance in this manner leads to an unfair result.

ARGUMENT

I. THE FIRST DISTRICT HAS JURISDICTION TO REVIEW THE TRIAL COURT'S NONFINAL ORDER UNDER THE JURISDICTIONAL TEST FASHIONED BY THE SECOND DISTRICT IN *HASTINGS* I, AND AFFIRMED BY THIS COURT IN HASTINGS II.

Rule 9.130(a)(3)(C)(vi), Fla.R.App.P., authorizes appellate review of nonfinal orders which determine, as a matter of law, that a party is not entitled to workers' compensation immunity.

The Respondents argue that the trial court's order in the present case is not appealable under this rule, because the order merely states that DOC's motion for summary judgment is "denied" without specifying whether the motion was "denied as a matter of law." This contention is incorrect. The language of an order does not determine its appealability.

A nonfinal order is appealable under ***Rule 9.130(a) (3) (C) (vi), Fla.R.App.P.*** to the extent that the trial court's denial of summary judgment turns on a question of law, as opposed to a question of fact. ***Hastings v. Demming (Hastings I), 682 So.*** 2d 1107, 1110 (Fla. 2d DCA 1996), *aff'd,* ***694 so.*** 2d 718, 720 (Fla. 1997), and See ***Tucker v. Resha, 648 So.*** 2d 1187 (Fla. 1994).[1]

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[1] 'Although ***Tucker*** v. ***Resha*** applies to Rule ***9.130*** (a) (3) ***(viii),*** Fla.R.App.P., which concerns the interlocutory appeal of an order denying summary judgment based on absolute or qualified immunity from a civil rights claim, this rule mirrors subparagraph (vi) which concerns workers' compensation immunity. Both rules require that a determination be made "as a matter of law" as a precondition for appellate review.

A motion for summary judgment may be denied for either of two reasons: (1) based on undisputed material facts, a party is not entitled to judgment as a matter of law, or, (2) there are material facts in dispute which need to be resolved, and summary judgment is therefore inappropriate. ***Rule 1.510(c), Fla.R.Civ.P.*** Under ***Rule 9.130(a)(3)(C)(vi), Fla.R.App.P.***, only the former is appealable, while the latter is not. ***Hastings I,*** 682 So. 2d at 1110 and ***Hastings II, 694 So.*** 2d at 720.

Trial courts will often perfunctorily dismiss motions for summary judgment without elaborating whether the denial was based upon a question of law or fact. In this situation, an appellate court can look beyond the face of the order and review the facts presented to the trial court on the motion for summary judgment to ascertain whether there were any material facts in dispute that would have prevented the court from reaching a decision as a matter of law. ***Hastings I,*** 682 So. 2d at 1110. ***See also Mandico v. Taos Construction, 605 So.*** 2d 850, 851-852 (Fla. 1992)(in the seminal case on this rule, the appellate court looked to the facts in the record to determine if workers' compensation immunity applied under the governing statutes).

In ***Hastings*** I, the Second District was faced with just such a general order, which merely stated that the motion for summary judgment based on workers' compensation immunity was

"denied" without further explanation. 682 So. 2d at 1108. The appellate court thereupon fashioned a test to determine when it had jurisdiction to review a nonfinal order under ***Rule 9.130(a)(3)(C)(vi), Fla.R.App.P.***:

> [The appellate court must be able to] **discern from the record or the order** under review that the facts presented to the trial court in connection with the motion for summary judgment were so fixed and definite that the court was **in a position to determine** clearly and conclusively, beyond doubt [whether the employer] was entitled to workers' compensation immunity as a matter of law . . .

Id. at 1110 (emphasis added). This jurisdictional test was later adopted by the First District in ***Gustafson's Dairy v. Phiel,*** 681 So, 2d 786 (Fla. 1st DCA 1996), and approved by this Court in ***Hastings II, 694 So.*** 2d at 719-720.

The nonfinal order in the present case passes this jurisdictional test. In its opinion, the First District made the specific finding that:

> [A] review of the record presented to the court on the motion for summary judgment reveals that there were no disputed issues of material fact involving the job duties and responsibilities of the various parties . . .

Department of Corrections v. Culver, Case No. 96-4883 (1st DCA, December 31, 1997). (App. 1) The district court further found that the sole issue before the lower tribunal was whether, based on the undisputed facts, the Respondent and the co-employees whom she blamed for her injuries were "assigned

primarily to unrelated works" such that an exception to DOC's workers' compensation immunity applied. ***Id.*** The First District even acknowledged that "the immunity issue appears ripe for review." ***Id.***

Therefore, given that the First District is able to discern from the instant record that the trial court was in a position to make a determination as a matter of law, that DOC was not entitled to workers' compensation immunity, the fact that the trial court failed to specifically ***state*** that it did so, should not preclude DOC's appeal.

II. THE LANGUAGE ON THE FACE OF AN ORDER SHOULD NOT BE DETERMINATIVE OF ITS APPEALABILITY.

Despite its acknowledgment that, based on the ***Hastings I*** analysis, "the immunity issue appears ripe for review," the First District dismissed DOC's appeal due to confusion regarding the following comment in this Court's opinion in ***Hastings II:***

> Nonfinal orders denying summary judgment on a claim of workers' compensation immunity are not appealable unless the trial court order specifically states that, as a matter of law, such a defense is not available to a party.

694 So. 2d at 720.

This comment presents an enigma. On one hand, this Court approved the Second District's decision in ***Hastings*** I, that in determining jurisdiction under ***Rule 9.130(a)*** (3) (C) **(vi),**

Fla.R.App.P., an appellate court may review the record to determine if there were any disputed facts raised in connection with the motion for summary judgment. 694 So. 2d at 720. Yet, on the other hand, the opinion in ***Hastings II*** contains a comment which appears to propound, without explanation, a new, much more narrow jurisdictional test, that an appellate court is restrained to look only at the face of the order on appeal, and may not review the record.

No case authority, public policy argument, or other rationale was articulated in support of the new test, nor was there even an acknowledgment that this Court was advocating a departure from the ***Hastings*** I analysis. Lacking an explanation, it is unclear whether this Court meant to supplant the jurisdictional test crafted by the First District in ***Hastings I.***

Prior to ***Hastings*** II, no case in any court, in the entire history of this rule has ever opined that an reviewing court cannot look beyond the four corners of a non-specific order to the record to discern whether or not any material facts were in dispute. In the case which gave birth to Rule ***9.130(a) (3) (C) (vi), Fla.R.App.P.*** itself, ***Mandico v. Taos Construction,*** the appellate court looked to the record to see if there were issues of material fact which would preclude workers' compensation immunity under the governing law. 605 So. 2d at

851-852 (Fla. 1992). From **Mandico** to the present, the only disputes have been over whether an appeal may be granted if questions of fact remain, ***not*** over whether an appellate court may look beyond the face of an order.

In ***Hastings I,*** the Second District had asked this Court to resolve the ongoing debate between the district courts by certifying conflict with the Fourth and Fifth Districts' rulings in Breakers ***Palm Beach, Inc. v. Gloger,*** 646 So. 2d 237 (Fla. 4th DCA 1994) and ***City of Lake Mary v., Franklin,*** 668 So. 2d 712 (Fla. 5th DCA 1996). The Fourth and Fifth Districts maintained that a denial of summary judgment based upon issues of material fact, was, in effect, a denial of summary judgment "as a matter of law" for the purposes of ***Rule 9.130(a)(3)(C)(vi) Fla.R.App.P. Breakers,*** 646 So. 2d at 237-238 and ***Franklin, 668 So.*** 2d at 714. While in contrast, the Second District in ***Hastings I,*** argued that denial "as a matter of law" meant that there was a complete absence of issues of material fact and that the trial court based its denial solely on an issue of law. 682 So. 2d at 1109-1111.

In ***Hastings II,*** this Court approved the Second District's decision in ***Hastings I*** and disapproved the Fourth and Fifth Districts' decisions in ***Breakers*** and ***Franklin.*** 694 So. 2d at 720. Yet, this Court stepped outside the certified conflict in

commenting that an order must specifically state on its face that workers' compensation immunity was denied as a matter of law. ***Id.***

Similarly, the comment went beyond the scope of the certified question that was submitted by the Second District to this Court for review:

> DOES AN APPELLATE COURT HAVE JURISDICTION... TO REVIEW A NONFINAL ORDER DENYING A MOTION FOR SUMMARY JUDGMENT ASSERTING WORKERS' COMPENSATION IMMUNITY WHEN THE ORDER DOES NOT CONCLUSIVELY AND FINALLY DETERMINE A PARTY'S NONENTITLEMENT TO SUCH IMMUNITY, AS A MATTER OF LAW, ***BECAUSE OF THE EXISTENCE OF DISPUTED FACTS,*** SUCH THAT THE EFFECT OF THE ORDER IS TO LEAVE FOR A JURY'S DETERMINATION THE ISSUE OF WHETHER THE PLAINTIFF'S EXCLUSIVE REMEDY IS WORKERS' COMPENSATION BENEFITS?

Hastings I, 682 So. 2d at 1116 (emphasis added). In ***Hastings*** I, the Second District looked to the record and determined that there were disputed issues of material fact. ***Id.*** at 1110 and *1116.* In certifying the above question, the district court was asking this Court, when they found disputed issues of material fact, whether they had jurisdiction to review the denial of workers' compensation immunity under Rule 9.130 ***(a)(3)(C)(vi), Fla.R.App.P.*** The Second District ***did not*** *ask* whether the lower court's order had to contain specific language, or whether it was proper to look beyond the order to the record. It is reasonable to infer that the Second District assumed that its discretion to review the record was implicit.

It should also be noted that in its opinion in ***Hastings*** II, this Court simply answered the certified question in the negative. 694 So. 2d at 720. This Court did not alter or reframe the certified question, as it is privileged to do, to accommodate a new proposition which would otherwise fall outside the scope of the original question.

It is therefore unclear whether, in making this comment, this Court intended to create a new jurisdictional hurdle, requiring orders denying summary judgment based on workers' compensation immunity to contain the specific wording "denied as a matter of law" before an appeal may be granted under ***Rule 9.130(a)(3)(C)(vi), Fla.R.App.P.*** However, regardless of intent, such a requirement should not be instituted.

Assuming that the rationale in imposing this additional hurdle is to promote judicial economy, sc that the appellate courts can simply look at the face of the order without having to expend effort by reviewing the record; the degree of economy that would be achieved is negligible.

First, when the orders that contain the magic words, "denied as a matter of law" are granted jurisdiction, the opposing party will nearly always request the district court to dismiss the appeal due to the existence of disputed material facts. Therefore the appellate courts will ultimately still

have to examine the record, canceling out whatever judicial economy had been gained earlier.

Second, there is the potential danger that many parties who would otherwise be entitled to immunity will be denied the opportunity for an interlocutory appeal because they will be unable to obtain orders which include the requisite language. In his special concurrence in ***Martin Electronics v. Glombowski,*** 1997 WL 525241 (Fla. 1st DCA, August 26, 1997)(J. Wolf, specially concurring), Judge Wolf pointed out that, as a practical matter, the nonfinal order denying summary judgment will typically be drafted by the prevailing party or by the trial judge, neither or whom have an incentive to prepare the language of the order in a manner conducive to appeal. As a result, the wording of such orders will frequently be ambiguous, and many parties entitled to immunity may be forced to go to trial.[2] Id.

Therefore, whatever judicial economy is gained by sparing the district courts from having to review the record, is spent several times over when parties who would otherwise be entitled

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[2] Note, that even if this Court were to amend the rule, requiring that the order denying summary judgment be drafted to include specific wording "as a matter of law" or "as a matter of fact," the party seeking immunity would still be at a disadvantage when faced with a trial judge who forgets or refuses to include the requisite language. The party would have to seek a writ of mandamus, whereupon the judge can simply state that there were disputed issues of material fact (whether there were or not), and the party would be denied the remedy of appeal).

to an appeal must unnecessarily proceed to trial at substantial cost to both parties concerned and the trial court, only to wind up back before the district court on appeal of the same issue which could have been resolved at the earlier stage.

Furthermore, whatever negligible judicial economy might be gained from creating this new requirement is substantially outweighed by the unfairness in requiring parties entitled to workers' compensation immunity to be denied early resolution, simply because the order lacks appropriate wording. Judge Wolf points out in his concurrence in ***Martin Electronics,*** that this result "seems inconsistent" with the original purpose of ***Rule 9.130(a)(3)(c)(vi), Fla.R.App.P.,*** enunciated by this Court in ***Mandico v. Taos Construction:***

> We suspect that one reason the court was willing to permit prohibition in *Murphee* was to avoid the necessity of requiring the trial to proceed to its conclusion when it was evident from a construction of the relevant statutes that the plaintiff's exclusive remedy was to obtain workers' compensation benefits. Because we are sensitive to the concern for an early resolution of controlling issues, we amend Florida Rule of Appellate Procedure 9.130(a)(3) . . .

605 So. 2d at 854-855. The purpose behind this rule is to provide parties who deserve it with immunity from suit, not just from liability. This purpose is frustrated when a party is denied its immunity, simply because the order which the party did not draft, does not contain specific language accommodating an appeal.

In a case like the present one, where there are no disputed issues of material fact, and the trial court was in a position to determine whether DOC was entitled to workers' compensation as a matter of law, it is manifestly unfair to deny DOC an opportunity for early resolution of this issue, merely because the trial court failed to specifically stated that it denied summary judgment "as a matter of law."

In short, the language of an order, alone, should not be the touchstone to invoke appellate jurisdiction. To do so, would be to inappropriately place form over substance.

CONCLUSION

Based on the foregoing arguments and authority, the certified question should be answered as follows:

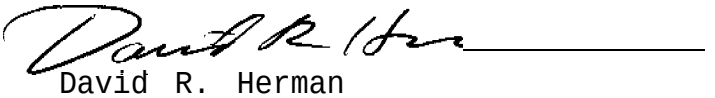
> In determining the appealability of a nonfinal order denying a motion for summary judgment based on workers' compensation immunity under Rule 9.130(a)(3)(C)(vi), Fla.R.App.P.; a district court may review the order or record to discern whether there were any issues of material fact raised in connection with the motion for summary judgment, so that the only issue to be resolved is whether, as a matter of law, a party is entitled to workers compensation immunity.

Accordingly, the First District's order dismissing DOC's appeal should be reversed and this case remanded to the First District for determination of whether DOC is entitled to workers' compensation immunity as a matter of law.

Alternatively, DOC requests that this case be remanded to the trial court for rehearing of DOC's Motion for Summary Judgment, so that court may enter a new order with specific language on its face indicating whether DOC is entitled to workers' compensation immunity is made as a matter of law.

Respectfully Submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL



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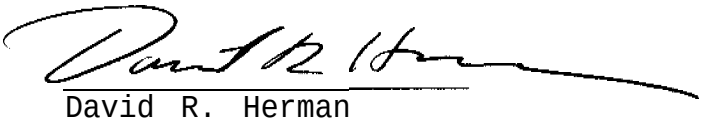
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the **foregoing** has been furnished by U.S. Mail delivery to Marcia Davis, Esquire, 2228 NW 40th Terrace, Ste. B, Gainesville, FL 32605; this 19th day of February, 1998.



David R. Herman

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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

DEPARTMENT OF CORRECTIONS,

Appellant,

NOT FINAL UNTIL TIME EXPIRES TO FILE MOTION FOR REHEARING AND DISPOSITION THEREOF IF FILED

v.

CASE NO. 96-4883

JUNE CULVER AND GLENN CULVER,

Appellees.

Opinion filed December 31, 1997.

An appeal from the Circuit Court for Jackson County. John E. Roberts, Judge.

Robert A. Butterworth, Attorney General;' Pamela Lutton-Shields, Assistant Attorney General; David R. Herman, Certified Legal Intern, Tallahassee, for appellant.

Marcia Davis and Thomas W. Ledman of Barron, Redding, Hughes, Fite, Bassett, Fensom & Sanborn, P.A., Panama City, for appellees.

WOLF, J.

This is an appeal from a nonfinal order denying appellant's motion for summary judgment based on workers' compensation immunity. The sole issue was whether the prison security officers who worked for the Department of Corrections and the plaintiff, June Culver, a prison psychologist, were engaged in primarily unrelated works at the time of the attack on the plaintiff. A review of the record presented to the court on the motion for

summary judgment reveals that there were no disputed issues of material fact involving the job duties and responsibilities of the various parties at the time of the attack. The order denying summary judgment simply states that it is denied without providing further reasoning. Although the immunity issue appears ripe for review, based upon the supreme court's decision in Hastinas v. Demming, 22 Fla. L. Weekly S243 (Fla. May 8, 1997), this appeal must be dismissed. Martin Electronics v. Glombowski and Phillips, 22 Fla. L. Weekly D2054 (Fla. 1st DCA Aug. 26, 1997). For the reasons outlined in both the majority and concurring opinions in Martin, however, we certify the following question to be one of great public importance:

> IN DETERMINING THE APPEALABILITY OF A NONFINAL ORDER DENYING A MOTION FOR SUMMARY JUDGMENT BASED ON WORKERS' COMPENSATION IMMUNITY, ARE WE RESTRICTED TO LOOKING ONLY AT THE ORDER ON APPEAL OR MAY WE REVIEW THE RECORD IN THE MANNER DESCRIBED IN HASTINGS V. DEMMING, 682 So. 2d 1107 (Fla. 2D DCA 1996).

The appeal is dismissed.

BOOTH, J., concurs; VAN NORTWICK, J., concurs in result only.

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IN THE CIRCUIT COURT, FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR JACKSON COUNTY, FLORIDA

JUNE CULVER and GLENN CULVER,

Plaintiffa,

vs. CASE NO. 95-573-CA

STATE OF FLORIDA, DEPARTMENT OF CORRECTIONS and STATE OF FLORIDA BOARD OF CORRECTIONAL EDUCATION, a legislatively dissolved body corporate.

Defendants.

AMENDED COMPLAINT

Plaintiffs, JUNE CULVER and GLENN CULVER, by and through their undersigned attorney, hereby sue the STATE OF FLORIDA, DEPARTMENT OF CORRECTIONS ("WC") and the STATE OF FLORIDA BOARD OF CORRECTIONAL EDUCATION ("BCE"), a legislatively dissolved body corporate and former supervisory board of tho CORRECTIONAL EDUCATION SCHOOL AUTHORITY ("CESA"), and allege as follows:

GENERAL ALLEGATIONS

2. This is an action for damages in excess of $15,000, brought under the waiver of sovereign immunity statute, Fla. Stat. §768.28, for negligence of employee8 of the WC and CESA.

2. Plaintiffa, pursuant to the provisions of Fla. Stat. §768.28(6), have given the DOC and BCE, through CESA, proper notice of their intention to assert a claim, and have sent a copy of said

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DEPARTMENT OF LEGAL AFFAIRS
RECEIVED, CIRCUIT COURT
9/29/95
DATE

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notice to the Division Of Risk Management, More than six months has elapsed since the giving of notice to the DOC and BCE on November 16,1994, and the plaintiffs' claims have been expressly denied by the Division of Risk Management. (See copies of correspondence, attached hereto as composite Exhibit "A" and made a part hereof for all purposes).

3. Plaintiffs are, and at all times material hereto were, residents of the state of Florida, residing at 5221 Woodgate Way, Marianna, Florida.

4. June Culver was at all times material hereto employed by the DOC as a prison psychologist specialist at the Appalachee Correctional Institute ("ACI") in Sncade, Florida.

5. The WC was at all times material hereto responsible for maintaining prison security at ACI through its employment of prison security officers.

6. On or, about February 16, 1995, June Culver and the prison security officers were employed by the DOC and were assigned to unrelated works within cha public employment of the WC.

7. As provided in Fla. Stat §242.68, the BCE was created for the purpose of managing and operating correctional education programs and was designated as the supervisory board of CESA. The BCE was created as a body corporato with all powers of a body corporate including the power to sue and be sued.

8. CESA was at all times material hereto in charge of education programs for inmates of ACI through its employment of

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classroom teachers education counselors and other education personnel.

9. CESA and the BCE were dissolved by the 1995 Legislature effective July 1, 1995 and their function was transferred to the DOC Education and Job Training effective July 1, 1995. Tha chairman of the last BCE prior to dissolution was Daniel J. Valdez.

10. Willie Price is and at all times material hereto was an inmate at ACI, imprisoned on conviction of multiple offenses, including battery, sexual battery by some force and violence, and attempted sexual battery of some force and violence.

11. on November 23, 1991, Willie Price failed to report to his prison education classes, taught by CESA employees Jerry Oliver and Carol Wilson, in the education complex. On that same date, during the time *hc* should have boon in class, Willie Price appcarad in Juno Culver's office in the East Unit. Willie Price demanded help and threatened Mrs. Culver. Willie Price then fled Mrs. Culver's office, and Mrs. Culver filed an incident report. As a result of the incident, Willie Price was placed in administrative confinement.

12. On November 23, 1992, Willie Price had ***no authorization*** to be absent from his classes, but he was not reported missing fur two hours after his failure to report.

13. Both the employees of CESA and the prison security officers employed by the DOC were aware of Willie Price's misconduct on November 13, 1992 and his resulting administrative confinement.

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14. On February 18, 1993, Willie Price attacked and raped June Culver in her office in the Eastside of ACI, while he was working in the course of her employment.

15. On February 18, 1993, at the time he attacked Ms. Culver, Willie Price was supposed to be accompanied by a class taugh Mo. Carol Wilson in the education complex. However, Ms. Wilson permitted him to leave the classroom to obtain an inmate pass to the G & H Dormitory to get tylenol for a headache. Ho. Wilson did not document Willie Price's departure from the classroom in accordance with established procedure.

16. On February 18, 1993, Willie Price was issued an inmate pass by Dan Couliette, an education counselor employed by CESA, but the pass was actually given to Willie Price by inmate clerk Barry Bickham. As Willie Price departed with his pass, Bickham heard him remark "I will get that fat bitch before I get back." Bickham did nor report this statement to anyone, and Willie Price was permitted to leave Couliette's office unaccompanied.

37. On February 18, 1993, after Willie Price obtained tylenol from the G & H Dormitory, the officer on duty at the dormitory failed to indicate his time of departure from the dormitory on his inmate pass, in accordance with established procedure.

18. On February 18, 1993, Dan Couliette failed to check into the whereabouts of Willie Price when he did not return to the education complex from the G & H Dormitory in accordance with established procedure.

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19. On Februr v 18, 1993, Ms. Wilson failed to follow up on Willia Price's whereabouts when ha did not return to ehe classroom on February 18, 1993, in accordance with eotablished procedure.

20. On February 18, 1993, Willie Price had free access co the East Unit of ACI where Juna Culver's office wao located.

COUNT I: NEGLIGENCE OF THE DEPARTMENT OF CORRECTIONS

21. Plaintiff, Juno Culver, raallegee and . incorporates paragraphs 1 through 16, above, as if fully sat forth herein.

22. Tha' DOC's prison security officers acted negligently in failing to follow established security procedures and in fáiling to provide adequate security protection to Juna Culver.

23. As a result of tha DOC's ncgligonoo, Juno Culver ouf f ared a brutal. attack on her person by inmate Willie Price, causing her physical injury, psychological injury, pain, suffering, mental. anguish, medical expenses and loss of earnings. Thcac injurics are continuing and permanent in nature.

WHEREFORE, plaintiff June Culver demands a judgment for damagoe and for any ocher remedy which tha court deems appropriate against the defendant DOC.

EXHIBIT
A-7

IN THE CIRCUIT COURT OF THE FOURTEENTH JUDICIAL CIRCUIT
IN AND FOR JACKSON COUNTY, FLORIDA

JUNE CULVER and GLENN CULVER,

Plaintiffs,

vs. CASE No. 95-573-CA

STATE OF FLORIDA, DEPARTMENT OF CORRECTIONS, et al.,

Defendants.

10/1/96 gmb

DEFENDANT DOC'S MOTION FOR SUMMARY JUDGMENT

Defendant DOC, through undersigned counsel, moves for summary judgment as the Court file and affidavits, to be provided, demonstrate that there is no genuine issue of material fact and that Defendant DOC is entitled to judgment as a matter of law on the following grounds:

1. DOC was created to "integrate delivery of all offender rehabilitation and incarceration services that are deemed necessary for the rehabilitation of offenders and the protection of society." Section 20,315 Fla. Stat.

2. Plaintiff and the allegedly negligent DOC co-employees were employed at Apalachee Correctional Institution (ACI).

3. Plaintiff and the allegedly negligent DOC co-employees were engaged in delivering offender rehabilitation and incarceration services to the inmates incarcerated at ACI.

4. Accordingly, Plaintiff and her allegedly negligent coworkers were not assigned primarily to unrelated works and Plaintiffs exclusive remedy is through Worker's Compensation.

EXHIBIT
A-8

5. The allegedly negligent fellow OOC employees did not individually owe Plaintiff a duty of care to protect her from assault by Willie Price or to perform their jobs in any particular manner.

6. The classification of inmates, staffing, prison design and the establishment of policies, procedures and practices relating to security, inmate movement and related activities are inherently governmental activities as to which no duty of care is owed and sovereign immunity has not been waived.

CERTIFICATE OF SERVICE

I CERTIFY that a copy hereof has been sent by U.S. Mail to Marcia Davis, 220 McKenzie Avenue, P.O. Box 2467, Panama City, Florida, 32402, this 21st day of October 1996.

Respectfully submitted,

ROBERT A. BUTTERWORTH
ATTORNEY GENERAL

Pamela Lutton-Shields
Assistant Attorney General
Fla. Bar No. 230324

Office of the Attorney General
The Capitol - Suite PL-01
Tallahassee, FL 323994 050
(904) 488-9935 / FAX 488-4872

EXHIBIT
A-9

IN THE RCUIT COURT, FOURTEENTH ICJAL CIRCUIT
IN AND FOR JACKSON COUNTY, FLORIDA

JUNE CULVER and GLENN CULVER,

Plaintiffs.

vs. CASE NO. 95-573CA

STATE OF FLORIDA, DEPARTMENT OF CORRECTIONS, and STATE OF FLORIDA, CORRECTIONAL EDUCATION SCHOOL AUTHORITY,

Defendants.

O R D E R

THIS CAUSE came on for hearing before me on Defendant's Motion For Summary Judgment as it relates to the Defendant, State of Florida Department of Corrections. After hearing argument of counsel and reviewing cases and memorandums of law, it is

ORDERED AND ADJUDGED that the State of Florida, Department of Corrections Motion For Summary Judgment is denied.

DONE AND ORDERED this 15th day of November, 1996, at the Jackson County Courthouse, Marianna, Florida.

John E. Roberts

JOHN E. ROBERTS
Circuit Judge

Copies Furnished co:

Marcia Davis, Esq.
Pamela Lutcon-Shields, Esq.

EXHIBIT
A-10

Civil AG 5-8-97

District COURT OF APPEAL, FIRST DISTRICT

Tallahassee, Florida 32399-1850

Telephone (904) 488-6151

97 JUN -3 PM 1:20

ATTORNEY GENERAL'S OFFICE
GENERAL LEGAL SERVICES

DATE: May 30, 1997

CASE NO.: 96-4883

DEPARTMENT OF CORRECTIONS, Appellant.

vs.

JUNE CULVER AND GLENN CULVER, Appellees.

ORDER TO SHOW CAUSE

Appellant is ordered to show cause within ten (10) days of the date of this order why this case should not be dismissed in light of the supreme court's decision in Hastings v. Demming, 22 Fla. L. Weekly S243 (Fla. May 8, 1997). Appellee may answer within ten (10) days from the date the appellant files its response to this order. No additional responses will be allowed.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Jon S. Wheeler

JON S. WHEELER, CLERK

By: Anne Moore
Deputy Clerk

Copies:

✓Pamela Lutton-Shields
Thomas W. Ledman
Marcia Davis

DEPARTMENT OF LEGAL AFFAIRS
TORT SECTION
FILE COPY
RECD 5/30/97 FILED W/COURT
DOCKETED BY

EXHIBIT
A-11