OA 1-4-99

IN THE SUPREME COURT OF FLORIDA

CASE NO. 92,93 1

District Court Case No. 97-01196

SANDRA LASKEY, etc.,

Petitioner,

vs.

MARTIN COUNTY SHERIFF'S DEPARTMENT,

AMICUS BRIEF OF STATE OF FLORIDA DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES, DIVISION OF HIGHWAY PATROL ON THE MERITS

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CERTIFICATE OF TYPE STYLE

This brief is typed in Times New Roman 14 cpi type style size.

TABLE OF CONTENTS

TABLE OF CITATIONS AND AUTHORITIES

INTRODUCTION

The State of F'lorida, Department of Highway Safety and Motor Vehicles, Division of Highway Patrol had originally been a party in the trial court. In this Brief we will refer to the State as the State. However, the Plaintiff decided to file a voluntary dismissal as to the Division of Highway Patrol and proceeded only as against Martin County. In this Amicus Brief the State of Florida, Department of Highway Safety and Motor Vehicles will refer to the Petitioner and the Respondent as the Plaintiff and Defendant or alternatively by name, All emphasis will be supplied unless otherwise indicated to the contrary.

STATEMENT OF CASE AND FACTS

This Amicus Brief the State is submitted based upon the Statement of Case and Facts as set forth by the Plaintiff.

POINT INVOLVED ON APPEAL

WHETHER THE TAXPAYERS OF THE STATE OF FLORIDA SHOULD NOT BE REQUIRED TO PAY FOR A FAILURE OF A 911 OPERATOR TO DISPATCH A SHERIFF TO A HIGHWAY TN ORDER TO STOP A MOTORIST WHO IS ENDANGERING THE LIVES OF OTHER MOTORISTS?

SUMMARY OF ARGUMENT

The Plaintiff should be made whole by the payment of damages from the motorist who chose to drive up an interstate highway at a high rate of speed and not the taxpayers of the state of Florida. To hold otherwise would mean that the state of Florida should pay for damages for anyone who has been hurt while driving along the highways of the State of Florida because law enforcement should have been able to prevent the accident. This position is simply unrealistic

The common law provides that in general there is no duty owed to prevent the misconduct of a third party, Without such a duty the 911 officer could not be held responsible to the Plaintiff since the damages as stated were caused by the improper driving of a motorist unless there were some statutory duty imposed. There is not such duty imposed in the statute, which created the 911 system.

In the instant case the damages flow from the misconduct of a third party and not the misconduct of any of the employees of the state of Florida. Therefore, the taxpayers should not be made to pay for damages that it has no duty to pay. The law enforcement agencies, who would have been the party contacted by a 9 11 operator about the improperly driving motorist had no duty to prevent the accident. Therefore, the taxpayers should not be required to do so simply because the 911 operator failed to contact the law enforcement agency.

ARGUMENT

THE TAXPAYERS OF THE STATE OF FLORIDA SHOULD NOT BE REQUIRED TO PAY FOR A FAILURE OF A 911 OPERATOR TO DISPATCH A SHERIFF TO A HIGHWAY IN ORDER TO STOP A MOTORIST WHO IS ENDANGERING THE LIVES OF OTHER MOTORISTS?

In the instant case the Plaintiff advocates a position that the citizens of this state should be responsible for the actions of all law violators regardless of whether the citizens know who the violators are or whether they can prevent the violation from occurring. In support of its position the Plaintiff attempts to confuse the real issues involved by claiming that the operation of a 911 system should be deemed the rendering of professional or other services for which this Court has held there may be some liability because of a common law duty of care regarding how general services are performed. The very specific argument of the Plaintiff is that the trial court and the Fourth District Court of Appeal should not have dismissed her complaint because a '"911 System" should be deemed a category IV operation, as versus a category II operation, as defined in Trianon Park Condominium Association, Tnc. v. City of Hialeah. 468 So.2d 912 (Fla. 1985). Therefore, the Plaintiff contends that, although the taxpayers should not be made to pay for the failure of the Highway Patrol or the Martin County Sheriffs Department to have prevented the accident from occurring they should otherwise

be made to respond because the 9 11 operator failed to relay a message to one of the enforcement agencies regardless of the fact there would not have otherwise been any liability that could have been imposed against the state for not having prevented the accident at issue. Everton v. Willard, 468 So.2d 936 (Fla. 1985); Wong v. City of Miami. 237 So.2d 1.32 (Fla. 1970); Trianon, supra. The Plaintiff should not be allowed to prevail, however, on her argument and the taxpayers should not be faced with having their limited resources spent on the defense of a law suit where there is but raw speculation that had the call been made by the 911 operator to a law enforcement agency the accident that caused the deaths would not have otherwise occurred, The citizens are not the insurers of all of the citizens for an injury that occurs. Yet that is in reality what the Plaintiff is asking this Court to order.

Briefly turning to the procedural issue, herein, it should be sufficient to point out that a complaint should be dismissed if it appears that the pleader can prove no set of facts whatever in support of a claim. Wausau Ins. Company v. Haynes, 683 So.2d 1123 (Fla. 4th D.C.A. 1996); Conley v. Gibson, 355 U.S. 41 (1957) Hence, if there are no set of facts that could ever support a claim the complaint should be dismissed. This is especially true in the legal world today when the cost of litigation has almost become prohibitive. Why should the trial

court not take a very careful look at the whole case, albeit from the four corners of the complaint, and decide that even if there is some truth to the allegations in the long run there could never be any recovery and, therefore, dismiss the case before needless funds not only in the prosecution and the defense of such a case are spent but as well the funds that are required for the court's involvement? The answer is that this is exactly what the court should do because that is what has always been contemplated by the motion to dismiss. If no set of facts could ever give rise to a recovery then end the matter early on by granting a motion to dismiss the complaint without putting the litigants through unnecessary litigation costs and the court through unnecessary exercises.

In the instant case the damages arose, not out of the negligence of the 911 operator, but, as a result of a motorist who was driving at a high rate of speed down the wrong lane of traffic on an interstate highway. The accident did not occur because the operator failed to contact a law enforcement officer and advise of the danger. Moreover, assuming that the 911 operator had contacted the appropriate law enforcement agency it is nothing but pure speculation that the law enforcement agency that would have been contacted would have been able to stop the motorist before the accident occurred. In addition, even if the law enforcement agency had been contacted that agency was still not obligated to

enforce the law since that is and has been traditionally a function of the police power of the state for which no underlying duty has ever been found to be owing to a citizen and, hence, no liability attaches (a Trianon, category II function). Everton, supra.; Wong, supra.; Trianon, supra. Therefore, to claim that the trial court should not have dismissed this case below is simply unrealistic. Under the facts of the instant case it would not matter what the Plaintiff pled in her complaint the outcome would be the same. The proximate causation of the Plaintiffs damages would still have been the motorist's negligence and not the negligence of the 9 11 operator, Fla. Stand Jury Inst. (Civ) 5.1 (a) Therefore, the courts below were correct in assessing that procedurally there was no viable cause of action pled by the Plaintiff.

The Plaintiff seeks to make a claim against the State that she otherwise would not have had. Clearly, there was no state obligation to stop the law violating motorist. Everton, Wong, Trianon, supra. Therefore, the Plaintiff seeks to impose a liability against the State by looking to the 911 system and claiming that it is a service offered to the citizens and, therefore, it is a category IV function of government that is involved, which means that there may be liability imposed if the service that is rendered is rendered in a negligent manner. Category IV, however, did not contemplate truly police power functions.

It is generally recognized that there is no duty to prevent the misconduct of a third person, Trianon. supra.; § 3 15 Restatement of Torts 2d. Further legislative enactments for the protection of the interests of the community as a whole rather than for the protection of an individual or a class of individuals create no duty of liability. Trianon, ; § 288 Restatement of Torts 2d, commentary. Clearly, the legislature did not intend to protect either an individual nor a class of individuals when it enacted § 365.17 1 Fla. Stat. (1974) This is evident by the statement of intent.

As stated by this Court in Trianon, supra. for there to be governmental tort liability, there must be either an underlying common law duty or a statutory duty of care with respect to the alleged negligent conduct. There has never been a common law duty owed to individuals for the enforcement of the police powers of the state. Trianon. sum-a. Police power has its origin, purpose, and scope in the general welfare of the state, or, as it is sometimes expressed, the public health, public morals, and public safety. See Snively Groves v. Mayo, 135 Fla. 300, 184 So. 839 (Fla. 1938); Burnsed v. Seaboard Coastline Railroad Company. 290 So.2d 13 (Fla. 1974) The police power embraces regulations designed to promote the public convenience or the general prosperity or public welfare as well as those designed to promote public safety or public health. Burnsed, supra. Therefore, a

statute such as the one in question establishing the 911 system is one that is traditionally deemed to be passed in accordance with the police powers of the state. [1] § 365.17 1 Fla. Stat. is clearly an act that was intended to provide a convenience to the public at large and not for the purpose of the protection of an individual or a class of citizens. There is simply no legislative intent that can be found in § 365.17 1 Fla. Stat. that would support any individual citizen a statutory right of recovery for the negligent handling of a 92 1 call.

In Trianon, supra. this Court stated clearly that a statute that is passed for the general public does not automatically create an independent duty to either individual citizens or a specific class of citizens. This is different from the services that are contemplated in the category IV classification as defined by this Court in Trianon, supra. In the category IV classification the Court was referring to services that are specifically provided to specific individuals for their benefit such as professional (medical or psychological provided to the indigent by the state), educational and general services for the health and welfare of the citizens. As an example of such a classification this Court spoke of the provision of medical services and how the decision to provide a sufficient number of doctors

[1] Here the intent of $365.171 Fla. Stat. is stated to be for the convenience of the public to make it easier for the public to contact emergency services, which is clearly a police power.

would not be actionable but the malpractice of a doctor would be a breach of duty. These are not the services contemplated to be provided by a 9 11 call. No individual one on one services are provided , which services if negligently performed could cause injury under the circumstances herein.

It is respectfully submitted that the 911 system is kindred to the police and fire services or other emergency services that are services that are exempt from tort liability rather than to a professional providing service to specific individuals or the provision of general services created for the benefit of a particular class of individuals such as foster children. The police and fire and other emergency services are traditionally deemed to be services provided to the public at large for which services no liability attaches. Trianon, supra.

To hold that the 911 system, which is a convenience to the public, makes the taxpayers responsible for the negligence of a law violator is just carrying the waiver of sovereign immunity way beyond the intent behind the passage of § 768.28 Fla. Stat. (1993) There is no underlying duty to prevent an injury such as that which occurred in the instant case and the citizens of this state should not be forced to insure the actions of law violators by circumventing the traditional principles of law that the state owes no duty to individuals without some common law or statutory duty being present. The taxpayers should not be made to pay for

the failure of the 911 operator to forward a call to an agency who had no duty to enforce the law at the time of the accident. The law violator should be the one to pay.

CONCLUSION

It is respectfully submitted that based upon the foregoing argument and citations of law it is respectfully submitted that the decision below should be affirmed.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 11 th day of September, 1998 to Mr. Arnold Ginsberg, Esq., 4 10 Concord Building, 66 West Flagler St., Miami, Fla. 33 130, attorney for the Plaintiff and to Ms. Alexis M. Yarbrough, Esq., Purdy, Jolly, & Giuffreda, P.A., 1322 S.E. 3rd Ave, Fort Lauderdale, Fla. 333 16.

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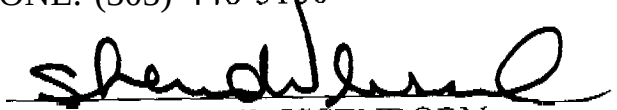
By: 
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