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JUN 2 1998

IN THE SUPREME COURT OF FLORIDA

CLERK, SUPREME COURT

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Chief Deputy Clerk

SANDRA H. LASKEY,
Individually and as Personal
Representative of the Estate of
GEORGE DOUGLAS LASKEY, III,

CASE NO. 92, 931

DCA CASE NO. 97-01196

Petitioner,

vs.

MARTIN COUNTY SHERIFF'S
DEPARTMENT,

Respondent.

RESPONDENT'S AMENDED ANSWER BRIEF ON THE ISSUE OF JURISDICTION
(CONFLICT CERTIORARI)

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It is hereby certified by undersigned counsel that the type size and style used in this brief is 12 Point Courier, double spaced.

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INTRODUCTION

The Petitioner, Sandra H. Laskey, individually, and as personal representative of the Estate of George Douglas Laskey, III, for and on behalf of George Douglas Laskey, II, and Audrey Laskey, surviving parents, and the Estate of George Douglas Laskey, III, deceased, was the Plaintiff in the trial court and the Appellant in the District Court of Appeal, Fourth District. The Respondent, the Martin County Sheriff, was the Defendant/Appellee. In this Brief of Respondent on jurisdiction, the parties will be referred to as the Petitioner and the Respondent.

JURISDICTIONAL STATEMENT

This Court has jurisdiction pursuant to article V section 3(b)(3) of the Florida Constitution. The basis for jurisdiction is set forth in the argument below.

STATEMENT OF THE CASE AND FACTS

Respondent concurs with Petitioner's recitation of the statement of the case and facts.

SUMMARY OF THE ARGUMENT

The issue of law sought to be reviewed is whether a duty may be imposed upon a sheriff by something other than common law or statute absent a special relationship. Petitioner asserts that this issue has been substantively addressed in the present cause and the Second District's opinion in Cook v. Sheriff of Collier County, 573 So. 2d 406 (Fla. 2d DCA 1991). Petitioner further asserts that the present cause, and the Second District's opinion in Cook are in direct and express conflict on this issue. On the

contrary, there is no direct conflict on this issue between the present cause and the Cook decision. Rather, a direct conflict does exist on this issue between the present cause and the Second District's decision in Hoover v. Polk County Sheriff's Dept., 611 So. 2d 1331 (Fla. 2d DCA 1993).

The Fourth District in the present action did acknowledge conflict with the Second District's opinion in Cook. The Fourth District's acknowledgment of the conflict was accurate; however, the conflict exists on a separate issue which is not herein sought to be reviewed. Specifically, the Second District's opinion in Cook conflicts with the Fourth District's opinion in the present action and with this court's opinion in Pizzi v. Central Bank & Trust Co., 250 So. 2d 895 (Fla. 1971) on the standard to be applied in reviewing a motion to dismiss. Thus, there is a direct and express conflict between the decision in Cook and the present cause on the applicable standard of review. The conflict on the issue of the appropriate standard of review to be applied to a motion to dismiss is not sought to be reviewed by this court. However, it is necessary to discuss Cook in order to explain why Petitioner's argument is unsound.

Turning to the actual issue herein sought to be reviewed, i.e. whether a duty may be imposed against a sheriff by something other than common law or statute absent a special relationship, a direct and express conflict exists between the Fourth District's opinion in the present action and the Second District's opinion in Hoover, supra. The Fourth District in the present action, and this Court's

opinion in Trianon Park Condominium Assoc. v. City of Hialeah, 468 so. 2d 912 (Fla. 1995), correctly hold that a duty may not be imposed against a sheriff except by common law or statute absent a special relationship. The Second District's opinion in Hoover, supra, held that a duty may be imposed upon a sheriff by policies and procedures promulgated by the sheriff where none otherwise exists under common law or statute. Thus, the decision in Hoover directly conflicts with this Court's decision in Trianon Park, supra, and the Fourth District's decision in the present cause.

Accordingly, a conflict does exist between the decision in Cook and the present cause on the superfluous issue of the standard of review to be applied on a motion to dismiss. However, the relevant conflict **on the issue of the imposition of a duty against** a sheriff by something other than common law or statute absent a special relationship exists between Hoover and the **present cause**.

ARGUMENT

- I. THE DECISION HEREIN SOUGHT TO BE REVIEWED IS NOT IN DIRECT CONFLICT WITH THE SECOND DISTRICT'S OPINION IN COOKV. SHERIFF OF COLLIER COUNTY, ON THE PIVOTAL ISSUE OF WHETHER A DUTY MAY BE IMPOSED AGAINST A SHERIFF BY SOMETHING OTHER THAN COMMON LAW OR STATUTE ABSENT A SPECIAL RELATIONSHIP

Petitioner incorrectly asserts that the Second District rejected the defendant's argument in Cook that it owed no duty under the circumstances to relay information obtained in a 911 call. Rather, the Second District held:

. . . in ruling on a motion [to dismiss] we are confined to a consideration of the allegations found within the four corners of the complaint.

. . . .
Since Mrs. Cook alleged a duty based upon the [911] plans and we must accept all allegations of the complaint as true, Mrs. Cook stated a cause of action, and we, accordingly reverse.

Id. at 408 (citations omitted). Accordingly, the Second District erroneously accepted all factual and legal allegations as true in determining whether the plaintiff in Cook stated a cause of action against the sheriff. The correct standard of review only requires acceptance of factual allegations. See Pizzi, supra. Obviously, Mrs. Cook is not entitled to allege the existence of a legal duty where one does not exist. Thus, there is a direct conflict between the decision in Cook and the present cause on the standard of review to be applied on a motion to dismiss.

However, the court in Cook refrained from determining as a matter of law that a duty existed under the 911 plans. Rather, the court specifically stated, "We cannot determine whether the individual plans establish such a duty because they are not in the record and apparently were not reviewed by the trial court." Ibid. Thus, the Cook decision conflicts with the present action only on the standard of review issue which is not the issue herein sought to be reviewed.

II. THE TRUE CONFLICT ON THE PIVOTAL ISSUE OF WHETHER A DUTY MAY BE IMPOSED AGAINST A SHERIFF BY SOMETHING OTHER THAN COMMON LAW OR STATUTE ABSENT A SPECIAL RELATIONSHIP EXISTS BETWEEN THE DECISION HEREIN SOUGHT TO BE REVIEWED AND THE SECOND DISTRICT'S OPINION IN HOOVER V. POLK COUNTY SHERIFF'S DEPARTMENT

Turning to the issue sought to be reviewed, the real conflict exists between the Second District's opinion in Hoover, supra, and the present cause. Subsequent to the Second District's opinion in Cook, supra, the Second District adopted as law the dicta in Cook and held that a duty may be imposed against a sheriff under the policies and procedures promulgated by the sheriff where none otherwise exists under common law or statute absent a special relationship. Hoover, supra, at 1333. This Court has firmly stated that "clearly no governmental liability exists" under circumstances where no statutory or common law duty of care exists. Trianon Park, supra, at 919.¹ The Fourth District in the present action properly abided by the precedent set forth by this Court in Trianon Park. The Second District's decision in Hoover, supra, directly conflicts with this court's decision in Trianon Park and the present cause since it improperly expands the holding of Trianon Park to allow a duty to be imposed by something other than common law or statute. Thus, a direct and express conflict exists between the Second District's opinion in Hoover, which adopts the dicta set forth in Cook, and this Court's opinion in Trianon Park, supra, and the present cause.

Accordingly, Respondent concurs that a direct and express conflict exists between the decisions rendered by the Second District in Cook, supra, and Hoover, supra, and the precedent

¹ The "special relationship" exception to this statement of law is not an issue in this case as Petitioner was unable to plead the existence of such a special relationship. See Everton v. Willard, 468 So. 2d 936 (Fla. 1985).

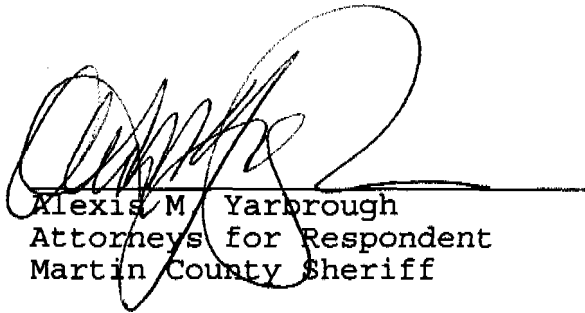
established by this Court in Pizzi, supra, and Trianon Park, supra, which was correctly followed by the Fourth District in the present action.

CONCLUSION

Respondent concurs with Petitioner's request of this Honorable Court to accept jurisdiction and review the merits of the present action.

Respectfully submitted,

By:



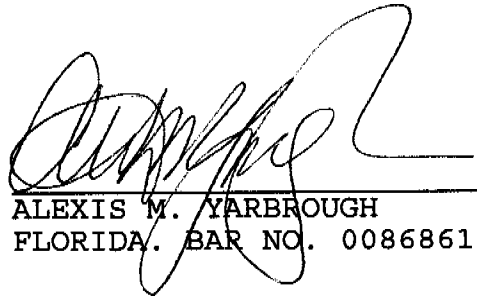
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Martin County Sheriff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and corrected copy of the foregoing was furnished via U.S. mail to **ROBERT H. SCHOTT, ESQUIRE**, Attorney for Petitioner, 872 S.W. Colorado Avenue, Stuart, Florida **34994** and **ARNOLD GINSBERG, ESQUIRE**, Attorney for Petitioner, Ginsberg & Schwartz, 410 Concord Building, 66 West **Flagler** Street, Miami, Florida 33130, on this 1st day of June, 1998.

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