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IN THE SUPREME COURT OF FLORIDA

CASE NO.: 93,038
4TH DCA CASE NOS.: 96-2481 96-2958,
96-2964, & 97-0223
L.T. CASE NO.: 90-20360-14
BROWARD

MICHAEL JON DiPIETRO and
MYRA DiPIETRO, a/k/a CARMELO
BELLIO, a/k/a MYRA J. CHANDLER
a/k/a MYRA NO LAST NAME, a/k/a MYRA,

Petitioners.

vs.

DAVID GRIEFER and ANN
GRIEFER, his wife, as
Guardians of the Person
and Property of LAUREL
B. GRIEFER, an Incompetent,

Respondents.

FILED

SID J. WHITE

MAY 29 1998

CLERK, SUPREME COURT
By _____
Chief Deputy Clerk

AMENDED PETITIONER'S JURISDICTIONAL BRIEF

On Review From the District Court
of Appeal Fourth District, State of Florida
4TH DCA CASE NOS.: 96-2481 96-2958, 96-2964
& 97-0223

KESSLER, MASSEY, CATRI, HOLTON
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PREFACE

Throughout this brief, the Petitioners, who were the Appellees/Cross-Appellants in the Fourth District Court of Appeal and who were the Defendants in the trial court, will be referred to as "Petitioners". The Respondents, who were the Appellants/Cross-Appellees in the Fourth District Court of Appeal and who were the Plaintiffs in the trial court, will be referred to as "Respondents". References to the Appendix will be preceded by the abbreviation "App." followed by the appropriate page number.

STATEMENT OF THE CASE AND OF THE FACTS

The Respondents are the guardians of Laurel Griefer, who was injured when she was struck by a motor vehicle operated by Petitioner, Michael DiPietro. Laurel was struck as she attempted to cross a Fort Lauderdale street. This personal injury case was tried to a jury who assessed damages--past, present and future--in the amount of \$2,075,000.00. The jury found the Petitioners 30% responsible for causing the accident and found Respondent 70% responsible. A final judgment was entered accordingly.

Respondents appealed the above judgment upon grounds not relevant here. The Fourth District Court of Appeal reversed the judgment and remanded for a new trial on damages only. The Fourth District Court of Appeal found on rehearing that the error about which Respondents complained affected only the issues of liability.¹ The judgment was vacated in the trial court and the case proceeded to a second trial.

Before the case was tried a second time, the Petitioners amended their complaint to claim pre-judgment interest from the date the first jury entered its verdict finding a gross amount of damages. The Respondents moved to dismiss or strike the claim for pre-judgment interest on the date of the first jury's verdict. They contended that an award of interest was improper until a second jury determined whether, and to what extent, Respondents were entitled to damages at all. The trial court allowed the claim to stand.

Following a second trial, the Petitioners again appealed claiming error and have now obtained a second reversal for a third trial on the issue of liability only. On cross-appeal, the

¹Griefer v. DiPietro, 625 So.2d 1226 (Fla. 4th DCA 1993).

Petitioners challenged the trial court order allowing interest from the date of the first jury's verdict in the personal injury case without a concurrent finding that the Petitioners were legally responsible to pay any or all of it at that time, or that the plaintiff had some vested interest in the amount.

The Fourth District Court of Appeal held that the Respondents' claim of pre-judgment interest from the first jury verdict was proper. Relying on a prior decision of the Fourth District Court of Appeal,² The Court stated that: "...the successful Plaintiff was entitled to pre-judgment interest for the period of time between the date of the jury verdict and the date of judgment." (App. 5) The Court also indicated that interest would be awarded on future economic damages as the Respondents would have invested the present dollar amount of the future economic damages awarded by the first jury to compensate them today for the lost future income stream. (App. 5)

The Petitioners will demonstrate that this Court should exercise its discretion and accept jurisdiction to review the Fourth District Court of Appeal's decision as it expressly and directly conflicts with decisions of this Court and other District Courts of Appeal on the same points of law.

²Palm Beach County School Board v. Montgomery, 641 So.2d 183, 184 (Fla. 4th DCA 1994).

SUMMARY OF ARGUMENT

In this case, the District Court of Appeal held, in a personal injury case, that the Respondents are entitled to pre-judgment interest from the date of the jury verdict from the first trial and not from the date of the entry of the final judgment, which has not yet been entered. The Fourth District Court of Appeal also held that an award of pre-judgment interest is awardable for future economic damages from the time the first jury entered its verdict. These decisions expressly and directly conflict with Rockman v. Barnes, 672 So.2d 890, 891 (Fla. 1st DCA 1996) (and others) and with Alvarado v. Rice, 614 So.2d 498, 499 (Fla. 1993) and others. Thus, the Petitioners request the Court to exercise its discretionary jurisdiction and review the decision of the Fourth District Court of Appeal.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to exercise its discretion and review decisions of the District Courts of Appeal that expressly and directly conflict with the decision of this Court, or of another District Court, on the same point of law. Art. V Section 3 (b)(3) Fla. Const. (1980); Fla.R.App.P. 9.030 (a)(2)(A)(iv); Ford Motor Company v. Kikis, 401 So.2d 1341 (Fla. 1981).

ARGUMENT

- I. THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL AT BAR EXPRESSLY AND DIRECTLY CONFLICTS WITH ROCKMAN v. BARNES, AND ALVARADO v. RICE, ON THE SAME POINT OF LAW.

The District Court of Appeal has held that in a personal injury case, the Respondents are entitled to pre-judgment interest from the date of the first jury's verdict. (App. 5) This decision conflicts with other decisions from District Courts of Appeal and with this Court on the same point of law.

In Rockman v. Barnes, 672 So.2d 890, 891 (Fla. 1st DCA 1996), the First District Court of Appeal held that interest does not accrue from the date of the entry of the jury's verdict. Instead, the Court held that interest accrues from the date of the entry of the judgment. The Barnes Court acknowledged conflict with the Fourth District Court of Appeal's decision in Montgomery, supra, on the same point of law involved here. The Fourth District relied upon Montgomery, supra, to reach its decision in the instant case to decide that in a personal injury action, interest accrues from the date of the verdict rather than the date of the judgment. Thus, the Fourth District Court of Appeal's decision that the Plaintiffs are entitled to pre-judgment interest from the date of the verdict in the instant case expressly and directly conflicts with the decision of the First District Court of Appeal in Barnes, which held that pre-judgment is not awarded from the date of the verdict in a personal injury case.

The Fourth District Court of Appeal's decision at bar also expressly and directly conflicts with this Court's decision in Alvarado v. Rice, 614 So.2d 498, 499 (Fla. 1993) which recognized a limited exception to the rule that pre-judgment interest is not

allowed in personal injury cases. See, Lumbermen's Mutual Casualty Company v. Percefull, 653 So.2d 389, 390 (Fla. 1995). In Alvarado, this Court held that a personal injury claimant may recover pre-judgment interest for actual out-of-pocket expenditures of private funds used to pay medical bills as a result of a Defendant's negligence. 614 So.2d 498, 499. Justice Harding stated for the Court that interest would attach since in such cases, the Plaintiff loses a vested property right. 614 So.2d at 500.

The decision in the instant case expressly and directly conflicts with Alvarado for two reasons. First, it allows recovery of interest upon an amount decided by the first jury in which the Respondents have no vested interest unless and until the Petitioners are found liable. Thus, the narrow exception recognized in Alvarado is not triggered and the Fourth District Court of Appeal's decision expressly and directly conflicts with Alvarado, because it grants an award of pre-judgment interest based upon inchoate sums.

Secondly, the decision at bar expressly and directly conflicts with the principles announced in Alvarado because it appears the Fourth District Court of Appeal has allowed recovery of pre-judgment interest on future economic damages. The Fourth District Court of Appeal held that since the Respondents would necessarily have to invest the amount of money awarded for future economic damages in order to replace the future income stream, pre-judgment interest is awardable. The Court stated:

"At the prior trial, the award of future economic damages was reduced to present money value as of the date of the verdict in 1991. Present money value is the value in current dollars of the future stream of payment. But in order for that present money value to replace the future income stream, it must be invested or earn interest to provide that

future amount. Thus, for the Griefers' award to compensate them today for that future income stream reduced to present money value, they must have invested it from the date of the verdict....Because we fixed damages in 1991 by refusing to reverse as to damages, without the award of pre-judgment interest the Griefers would not be compensated for all of their losses." (App. 5)

The Fourth District Court of Appeal's decision allowing interest on future economic damages expressly and directly conflicts with Alvarado, supra, which only allowed interest for actual out-of-pocket losses that pre-date the judgment.

The decision to allow interest upon other than out-of-pocket damages or for "loss of a vested right damages" expressly and directly conflicts with Zorn v. Britton, 120 Fla. 304, 307, 162 So.2d 879, 880-881 (1935) which, along with Farrelly v. Heuacker, 118 Fla. 340, 342, 159 So.2d 24, 25 (1935) held that pre-judgment interest is not recoverable in personal injury cases. This is expressly recognized in this Court again in Jackson Grain Co. v. Hoskins, 75 So.2d 306, 310 (Fla. 1954) in which it was noted that interest does not attach to items of damages such as future pain and suffering. In Argonaut Insurance Company v. May Plumbing Company, 474 So.2d 212, 214 n. 1 (1985), the Court reiterated the rule that pre-judgment interest is not recoverable in personal injury cases.

For reasons that will be more fully amplified in the arguments on the merits, the decisions cited above and other supporting decisions correctly determine that the Petitioners are not liable to pay interest in personal injury cases, except in the narrow circumstance outlined in Alvarado. Interest should only attach from the date of the judgment. Here, the delay of the entry of a judgment, if any is ultimately entered in the Respondents' favor,

is due to successive appeals by the Respondents who seek to benefit from the accrual of interest without any determination that they are entitled to a cent of principal in the first place. This Court should exercise its discretionary jurisdiction and entertain arguments on the merits.

CONCLUSION

WHEREFORE, due to the foregoing, and it having been demonstrated that this Court has discretionary jurisdiction to review the decision of the Fourth District Court of Appeal, the Court should exercise its discretion and accept jurisdiction to consider the arguments on the merits.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a copy of the foregoing has been furnished by U.S. Mail on this 26th day of May, 1998 to: **WEAVER & WEAVER, P.A.**, attorneys for Plaintiffs, 500 Southeast 6th Street, Suite 200, Fort Lauderdale, Florida 33302-4663; **ESLER, PETRIE & SALKIN, P.A.**, co-counsel for Plaintiffs, 315 Southeast 7th Street, Suite 300, Fort Lauderdale, Florida 33301; **KRUPNICK, CAMPBELL, MALONE, ROSELLI, BUSER, SLAMA & HANCOCK, P.A.**, co-counsel for Plaintiffs, 700 Southeast Third Avenue, Courthouse Plaza, First Floor, Fort Lauderdale, Florida 33316; **GREENBERG & TRAURIG, P.A.**, co-counsel for Plaintiffs, 1221 Brickell Avenue, 21st Floor, Miami, Florida 33131.

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