IN THE SUPREME COURT OF FLORIDA

CASE NO. 94,201

SELMA GROSS,

Petitioner,

vs.

REBECCA LYNN LYONS,

Respondent.

_____/

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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PREFACE

Petitioner/Defendant has appealed a Fourth District Court of Appeal decision certifying the following question to this court as one of great public importance:

> WHERE A PLAINTIFF IS INVOLVED IN TWO UNRELATED ACCIDENTS AND SUES ONLY THE TORTFEASOR IN THE FIRST ACCIDENT, ARE THE PRINCIPLES OF APPORTIONMENT CONTAINED IN C.F. HAMBLEN, INC. V. OWENS, 127 FLA. 91, 172 SO. 694, 696 (1937), AND WASHEWICH V. LeFAVE, 248 SO. 2D 670, 672 (FLA. 4TH DCA 1971) APPLICABLE?

Petitioner, Selma Gross, was the Defendant/Appellant/Cross-Appellee in the lower court. Respondent, Rebecca Lynn Lyons, was the Plaintiff/Appellee/Cross-Appellant. They are referred to herein as the Plaintiff and Defendant or by their proper names.

The following symbols are used:

R - Record on Appeal

T - Trial Transcript

STATEMENT OF THE CASE

Plaintiff cannot accept Defendant's statement of the case because it is incomplete. Plaintiff provides the following corrected statement:

Plaintiff filed suit in the Circuit Court for Palm Beach County, seeking damages for personal injuries sustained in a July 1992 automobile accident (R 1-2). Defendant admitted liability (R 183). The case proceeded to jury trial. At the close of the evidence, the court directed a verdict for the Plaintiff on causation and further ruled that

there would be no apportionment of damages between the July 1992 accident and the subsequent September 1992 accident (T 826). The only questions for the jury were whether Plaintiff sustained a permanent injury and the extent of damages attributable to the July 1992 accident.

On December 1, 1995, the jury returned its verdict, finding Plaintiff had not sustained a permanent injury and awarding zero damages (R 494-496). Plaintiff's counsel objected to the verdict as inconsistent before the jury was discharged (T 949). The trial court directed Plaintiff's counsel to file a motion for new trial on these issues (T 949).

The trial court entered final judgment for the Defendant on December 6, 1995 (R 514). The Plaintiff filed a motion for new trial and other relief on December 11, 1995 (R 515-540). By order of March 28, 1996, the trial court partially granted Plaintiff's motion for new trial and ordered a new trial on economic damages (R 558-561). The Defendant appealed and the Plaintiff cross appealed that decision (R 562-566; 569-574).

The Fourth District Court of Appeal reversed because the trial court gave a confusing and misleading instruction which it found was an incomplete statement of the law concerning a subsequent accident. Gross v. Lyons, 23 Fla. L. Weekly D1163 (Fla. 4th DCA May 13, 1998). The appellate court ultimately held that Defendant was responsible for all of the Plaintiff's injuries. Id. at D1164. The Fourth District also held that it was error for the trial court to grant Plaintiff's directed verdict on causation because there was conflicting evidence. Id. at D1165. Finally, the Fourth District ruled that a new trial should be conducted on all issues, except the Defendant's negligence which had been

admitted. Id. Judge Warner concurred with the result but dissented regarding the public policy issue of how damages should be allocated in multiple accident cases.

The Fourth District denied Defendant's motion for rehearing, but granted the motion for certification, certifying the aforestated question to this court. In a special concurrence on the rehearing, Judge Warner also wrote that the majority's opinion conflicted with the Third District case of Great Atlantic & Pac. Tea Co. v. Lanteri, 221 So. 2d 158, 159 (Fla. 3d DCA 1969).

STATEMENT OF THE FACTS

Plaintiff cannot accept Defendant's statement of the facts because it mischaracterizes and omits some significant evidence relevant to this court's review. Plaintiff provides the following corrected statement:

Defendant rear-ended Plaintiff, who was stopped and wearing her seat belt (T 133). The Defendant admitted liability (R 183). The impact was not "very minor" (Petitioner's Initial Brief, p. 4). The impact bent the bumper on Plaintiff's car, wrinkled the rear quarter panel and the trunk, and bent the frame (T 196-197). The repair bill approximated $4,000 (T 645). The damage to Defendant's car was $738 (T 771).

Even though the Plaintiff was wearing her seat belt at the time of the accident, her head hit the steering wheel (T 134). The Defendant was in a hurry to get somewhere and suggested they trade driver's licenses (T 134). The Defendant left before the Plaintiff called the police (T 134).

The Plaintiff then called the police, her boyfriend, whose car she was driving, and his father (T 134). Her boyfriend's father took her to the hospital emergency (T 135). The hospital took x-rays, gave her some medication and sent her home, with the name of an orthopedic doctor she should call for an appointment (T 136).
Plaintiff went home and went to bed (T 136). When she awoke, she was extremely sore (T 136).

The next day, she called the doctor's office that the hospital had recommended (T 136). That doctor was booked for several weeks so she took the first available appointment with his partner, Dr. Clay Baynham, on July 7th (T 136-137).

The Plaintiff filled out the questionnaire at Dr. Baynham's office and gave a history (T 323-325). She described pain in her neck and low back (T 324-325). The pain began with the July 2, 1992 accident and had persisted since (T 325).

Dr. Baynham examined the Plaintiff's cervical spine and found discomfort at the extremes of motion and tenderness in her spine (T 326). He examined her low back and found tenderness in the midline central portion of the spine and a significantly limited range of motion (T 326). Dr. Baynham reviewed the x-rays taken at the emergency room (T 327). The x-rays showed a condition in the Plaintiff's back called a Pars defect (T 327-329). Plaintiff had no knowledge of the Pars defect and no symptoms associated with it until Dr. Baynham told her (T 139). The Pars defect rendered her more susceptible to injury (T 335, 373, 491, 742).

Dr. Baynham next saw the Plaintiff on July 15, 1992 (T 339). The persistent low back pain had continued, but she was now experiencing numbness, paresthesia, and pain along the back of her right thigh, suggestive of sciatic irritability (T 340-341, 350). Dr. Baynham prescribed different medications on a regular basis (T 342).

Dr. Baynham saw the Plaintiff again on September 2 (T 342). Her pain persisted (T 342). He prescribed physical therapy, an anti-inflammatory, and pain medication (T 342).

Before the Plaintiff could begin her physical therapy, she was involved in a minor fender bender on September 14th (T 344). The Plaintiff telephoned Dr. Baynham's office the next day and told his nurse that she was having diffuse back pain and increased

symptoms (T 344). These complaints were not new, but an aggravation of her previous symptoms (T 345-346).

In an effort to control the persistent pain, the Plaintiff scheduled an epidural block in October 1992 with anesthesiologist, Dr. Stropp (T 345). The Plaintiff never met Dr. Stropp before the procedure (T 224). Dr. Stropp claimed he met with the Plaintiff several days before the procedure and took a history (T 620-621). He wrote down that her complaints began following accidents in August and September (T 620-621). This note was incorrect since the first accident was in July. He also wrote down that her major back injuries occurred in the second accident (T 621). Dr. Stropp conceded that he could have been mistaken in writing down that most of her problems were caused by the second accident (T 632).

Before Dr. Stropp could perform the epidural, the Plaintiff had a seizure (T 625). She spent three days in the hospital (T 226).

The Plaintiff continued treatment with Dr. Baynham. After about seven months, Dr. Baynham recommended surgery (T 228, 355). The Plaintiff was afraid of surgery and decided to continue conservative treatment and physical therapy (T 228-229). Dr. Baynham continued to recommend surgery (T 359). The Plaintiff finally scheduled the surgery two and a half years after the accident (T 358-359).

During the surgery Dr. Baynham made an incision in the back of the Plaintiff's spine and then separated the muscles and soft tissues from the bone (T 368). He saw scar tissue compressing the nerve, which had caused the irritation and tension (T 365, 371). He removed the scar tissue and a loose bone fragment (T 365-366, 369). He then

placed screws and a rod into the bone to stabilize it (T 369). He took a skin graft from the pelvic area and laid it on the bone on either side of the vertebrae (T 369-370).

Dr. Baynham described the surgery as a "big operation" with significant risks (T 370). It takes a long time to recover from this surgery (T 370). Fusion takes six months to one year (T 370). Most patients do not reach a stable point until one to two years post-surgery (T 370).

At the time of trial, the Plaintiff was still in physical therapy and intended to continue all recommended medical care and treatment, including medications and physical therapy (T 422, 432-433). She still has problems with her lower back and cannot sit for a long time or walk for a long distance (T 451). She has problems sleeping (T 451). She cannot pick up her daughter (T 449). She needs help with the cleaning and cooking (T 449).

Dr. Baynham attributed Plaintiff's injuries to the July 1992 accident (T 367). Dr. Baynham assigned the Plaintiff a 15% permanent impairment to her body as a whole as a result of the July 1992 accident (T 361, 367, 376-377, 408).

Plaintiff's medical bills totaled $57,569.65 (T 420). Insurance had paid $7,200, leaving $50,049.65 unpaid (T 420). The Plaintiff lost two weeks of work ($600 or $300/week) following the July 1992 accident (T 137, 281). Insurance paid $480, leaving $120 unpaid (T 420).

The Defendant hired two experts to testify at trial. Dr. Hyde, a retired emergency room physician and alleged biomechanical specialist, conceded that tearing a muscle, like a low back strain or sprain, results in scar tissue (T 697). He agreed that the Plaintiff had

suffered pain in her low back as a result of the accident (T 688). He had no opinion as to what caused the Plaintiff's surgery and no opinion as to whether she suffered a permanent impairment as a result of the accident (T 692). He deferred to the doctor who treated her in that regard (T 692). Dr. Hyde agreed that the July 1992 impact was sufficient to cause stretching and tearing, but deemed it insufficient to cause displacement or spondylosis (T 610-611; 654). Dr. Hyde was unaware, however, that the frame of the Plaintiff's car had bent during the accident and that the rear floor inside the trunk had to be replaced (T 677-678). Dr. Hyde agreed that the September accident caused the Plaintiff no permanent damage (T 692). He described it as a "glancing blow, left front to left front," a "pretty low energy thing" (T 693).

Defense IME, Dr. Donald Lambe, agreed that the Plaintiff sustained injury in the July accident, but disagreed that the injuries were permanent (T 728-731). Dr. Lambe agreed the Plaintiff had a 9-12% impairment rating, but he did not attribute it to the July accident (T 758). He agreed that when muscles, tendons and ligaments stretch, they can cause scar tissue which can impinge on a nerve and cause pain and symptoms (T 752). He also agreed that the September accident only "temporarily aggravated" the Plaintiff's symptoms and that the Plaintiff sustained no permanent impairment to any part of her body as a result of the September accident (T 728, 748). Dr. Lambe had no reason to disagree with the Plaintiff's relating her pain to the July accident (T 749-750). He agreed she went to the doctor and complained of back pain about a week after the accident (T 750). Dr. Lambe agreed that Dr. Baynham was in the best position to determine if Plaintiff had any objective findings at that time and to render an opinion as to whether the

Plaintiff was injured in that accident (T 750). Dr. Lambe acknowledged that he treats many patients in rear-end impacts that complain of low back pain (T 751). The majority of these have no objective findings (T 751).

In accordance with its having granted a directed verdict for the Plaintiff on causation, the court instructed the jury as follows:

> The court has determined and now instructs you as a matter of law that Mrs. Gross was negligent in the operation of a motor vehicle and that such negligence was the sole legal cause of the collision involving Rebecca Lyons on July 2, 1992.
>
> Rebecca Lyons is therefore entitled to recover from Selma Gross such loss, injury or damages is shown by the greater weight of the evidence to have thus been caused (T 932).

Over the Plaintiff's objection, however, the court gave the following misleading defense-requested instruction regarding the second accident:

> You are further instructed that Rebecca Lyons may not recover any loss injury or damage caused by the second accident of September 15, 1992 (T 932).

To make matters worse, the court misread the instructions and told the jury that, "if the greater weight of the evidence does not support the claim of Ms. Lyons, then your verdict should be for Mrs. Gross" (T 932). After the instructions were read, Plaintiff's counsel called this error to the court's attention and the court then told the jury:

> I made a mistake.
>
> Remember where I said, if the greater weight of the evidence does not support the claim of the Plaintiff in your verdict? Well, since that's already been determined -- I mean you really just need to answer. And it doesn't make -- it does so. I don't want you to consider this. But if you just confine yourself to the verdict form, you can't go wrong (T 942).

The court rejected the Plaintiff's argument on permanency and found that, "The jury's error on questions 1, 2, 3 & 4 of the Verdict Form did not affect its ability to answer the permanent injury question in accordance with the law and the evidence." (R 560). Defendant appealed the new trial on economic damages and Plaintiff cross-appealed (R 562-566, 569-574).

The Fourth District Court of Appeal held Plaintiff was entitled to a new trial on all issues, except liability which had been admitted. It also held that Defendant, as the original wrongdoer, could indeed be held responsible for all of Plaintiff's injuries. However, the Fourth District ruled that the trial court should not have entered Plaintiff's directed verdict on causation.

This appeal ensued.

SUMMARY OF ARGUMENT

The Fourth District correctly held that Plaintiff was entitled to a new trial on all issues but liability, because it was admitted. Because there was undisputed evidence about the aggravation of Plaintiff's pre-existing Pars defect, and undisputed evidence that Defendant caused at least some portion of the Plaintiff's injuries, Defendant was properly held responsible for all the Plaintiff's injuries under Florida Standard Jury Instruction (Civ. §6.2(b)) on Aggravation. This determination is also supported by the undisputed evidence demonstrating that Plaintiff suffered little if any injury in the second accident. Under these facts as well as well-established public policy concerns, the Fourth District correctly held Defendant responsible for all of Plaintiff's injuries in this case.

The Fourth District erroneously reversed the directed verdict granted by the trial court on causation. The evidence was undisputed that Defendants caused Plaintiff's injury and therefore the directed verdict on causation was proper.

ARGUMENT

POINT I

THE FOURTH DISTRICT CORRECTLY HELD THAT PLAINTIFF WAS ENTITLED TO A NEW TRIAL ON ALL ISSUES EXCEPT LIABILITY WHICH WAS ADMITTED.

The Fourth District correctly held that Plaintiff was entitled to a new trial on all issues but liability. Finding that the trial court gave a confusing and misleading instruction after it had properly given Florida Standard Jury Instruction (Civ. §6.2(b)), the court found that a new trial was necessary because the jury was likely misled by the erroneous instruction about the second accident. Gross v. Lyons, 23 Fla. L. Weekly D1163. Ultimately, under the facts of this case, it was proper to hold the original wrongdoer, Defendant Gross, liable for all of Plaintiff's injuries.

A. Under Florida Standard Jury Instruction (Civ. §6.2(b)) on Aggravation, it was proper to hold Defendant responsible for all of Plaintiff's injuries in this case.

This court has long held that where injuries aggravate an existing ailment or develop a latent one, the person whose negligence caused the injuries **must respond in damages for results of the disease as well as the original injury**. C.F. Hamblen, Inc. v. Owens, 127 Fla. 91, 172 So. 694, 696 (Fla. 1937)(emphasis added). In fact, the

Florida Standard Jury Instruction, (Civ. §6.2(b)) on damages, specifically adopted this court's ruling in C.F. Hamblen, thereby creating an undisputed principle of damages that wrongdoers should be held responsible for injuries they aggravate. Thus, in situations where a wrongdoer's negligence aggravates a latent condition of an innocent injured victim, as occurred here, it is well settled that such wrongdoer should be held responsible for the entirety of injuries resulting from that negligence.

Florida Standard Jury Instruction, (Civ. §6.2(b)) provides as follows:

> Any aggravation of an existing disease or physical defect [or aggravation of any such latent condition], resulting from such injury. If you find that there was such an aggravation, you should determine, if you can, what portion of (claimant's) condition resulted from the aggravation and make allowance in your verdict only for the aggravation. However, if you cannot make that determination or if it cannot be said that the condition would have existed apart from the injury, you should consider and make allowance in your verdict for the entire condition.

The concept of holding the original wrongdoer responsible for injuries he or she aggravates is not new. See e.g., C.F. Hamblen, supra. Further, it is well settled that the necessity to prove proximate cause is relaxed in situations, where the evidence indicates that defendant's negligence proximately resulted in an aggravation of a pre-existing condition, and it is impossible to divide the consequent injury. Washewich v. LeFave, 248 So. 2d 670, 672 (Fla. 4th DCA 1971). See also, Gaines v. Amerisure Ins. Co., 701 So. 2d 1192 (Fla. 3d DCA 1997) (Undisputed evidence that accident caused insured to suffer some aggravation of pre-existing injury made zero verdict for pain and suffering inadequate as a matter of law).

In this case, the undisputed evidence adduced demonstrated two very important

things: One, that Plaintiff suffered from a previously asymptomatic Pars defect (T 139; 741); and two, that Plaintiff suffered little, if any, injury in the second accident (T 345-346; 367; 692-693; 728; 748). Applying those two pieces of uncontroverted evidence, it is clear that the first tortfeasor was properly held responsible for all of the Plaintiff's injuries, because those injuries did in fact result from the first accident.

Defendant attempts to unnecessarily cloud the issue in this case by suggesting the facts here show an egregious subversion of proximate causation concepts. Defendant wishes to persuade this court that the Fourth District's opinion somehow creates a gross unfairness, and that she has been asked to assume responsibility for a whole host of woes which she never caused.[1] That is simply untrue.

Under the current state of Florida law, Defendant was properly held responsible for Plaintiff's injuries. Defendant's negligence was shown to have aggravated a pre-existing condition (T 139; 335; 373; 491; 792). Additionally, the undisputed testimony was that Plaintiff had not recovered from the first injury at the time of the second accident (T 347). Because all of Plaintiff's complaints were the same, and there was no evidence that she sustained any new injuries in the second accident for which defendant would not be responsible, defendant was properly held liable (T 347; 345-346).

Consider the testimony regarding Plaintiff's Pars defect. According to the testimony of her treating orthopedic surgeon, Dr. Clay Baynham, Plaintiff's x-rays revealed a Pars defect, of which Plaintiff was previously unaware (T 139). Dr. Baynham

[1]The Brief of the Amicus Curiae of the Academy of Florida Trial Lawyers will address the public policy issues in more depth. Plaintiff maintains, however, that this court should resolve the case on its own facts which do not require consideration beyond current established law.

specifically testified that this defect made her more susceptible to injury (T 335, 373, 491, 742). Plaintiff then had to have surgery on her lower back. Dr. Baynham causally related Plaintiff's injuries to the July 1992 accident, and assigned her a 15% permanent impairment (T 361; 367; 376-377; 408). The doctor also testified that because the second accident occurred within a few months of the first, there was not enough time to determine whether Plaintiff was getting better or worse (T 347).

Under the facts here, it is not necessary for this court to engage in an extensive analysis to consider variations on a longstanding rule of law, nor must it apply those variations to numerous hypothetical situations in an attempt to resolve the issues presented. Here, the evidence clearly supported that defendant aggravated plaintiff's pre-existing Pars defect. Further, defendant's negligence proximately caused all of plaintiff's injuries because she sustained no new injuries in the second accident. Thus, the Fourth District's opinion holding Defendant solely responsible for the injuries was correct and should be affirmed.

B. The public policy of this court requires compensation of innocent injured parties where a wrongdoer's negligence has caused those injuries.

Public policy mandates that full compensation be available for injuries negligently received whenever possible. See, Smith v. Greg's Crane Service, Inc., 576 So. 2d 814, 819 n.4 (Fla. 4th DCA 1991). That principle has been applied in a myriad of contexts, including those involving subsequent tortfeasors.

In Stuart v. Hertz, 351 So. 2d 703, 705 (Fla. 1977), this court held that an original wrongdoer is responsible for any subsequent injuries which the wrongdoer proximately

caused, even if those injuries were sustained due to an aggravating intervening event cause by a subsequent independent tortfeasor. See also Emory v. Florida Freedom Newspapers, 687 So. 2d 846, 848 (Fla. 4th DCA 1997)(Original tortfeasor held responsible for subsequent intervening negligence of treating physician). In the Stuart context, if an injured party received negligent medical treatment for the injury inflicted by the wrongdoer, and that treatment only served to worsen or aggravate the party's condition, then the original wrongdoer is held responsible for the aggravation of the injury. Id. at 848.

Florida Standard Jury Instruction (Civ.§6.2(b)) espouses the principle that any aggravation of an existing disease which results from injury inflicted by a tortfeasor may be charged against the tortfeasor, even when a precise allocation of aggravation is not possible. The aggravation instruction was based on this court's opinion in C.F. Hamblen, supra., where this court reiterated the importance of the wrongdoer assuming responsibility for the entire injury, even without an allocation of what portion the wrongdoer caused. Id. 696. In those instances, like the situation presented here, the original wrongdoer is responsible for the entire condition, irrespective of what portion of the total condition that wrongdoer caused. This court has the unique ability to consider public policy implications before making the law. In Champion v. Gray, 478 So. 2d 17, 20 (Fla. 1985), for example, this court emphasized the importance of compensating innocent injured parties. As a result of that articulated public policy objective, this court wrote that it was willing to modify the long established impact rule in an effort to achieve such an important policy goal. Id.

Likewise, the Fourth District in Smith v. Greg's Crane Service, Inc., 576 So. 2d 814, 819 (Fla. 4th DCA 1991) treated the presumption of continuing general employment in the worker's compensation setting, as a burden shifting presumption for similar public policy reasons. As that court specifically stated, it "[a]dopted that view in light of the public policy that full compensation be available for injuries negligently received whenever possible." Id. at n.4.

Here, Defendant urges this court to satisfy notions of fundamental fairness by articulating an arbitrary rule to undermine Plaintiff's ability to collect for injuries caused by the Defendant as the original aggravating wrongdoer. The advocated "fifty-fifty" apportionment flies in the face of all notions of fair play and substantial justice.

Most important to this court's inquiry however, is the idea that this court need not begin to approach the quagmire on apportionment of damages--a concept not even countenanced by Florida's Comparative Fault Statute--to resolve this case. Instead, this case may be resolved without making any drastic changes to our already existing law.

Here, the defendant was held responsible because she caused all of Plaintiff's injuries. The evidence here demonstrated both the aggravation of a pre-existing condition, as well as a subsequent accident which was a virtual non-event. In light of well established law, and the well established public policy of this court, the Defendant as original wrongdoer was properly held responsible for all of Plaintiff's injuries as the Fourth District found. The Fourth District should be affirmed on that point.

C. The new trial was properly awarded in this case based on a confusing and misleading jury instruction and not on weight of the evidence grounds.

In Point II of her Initial Brief, Defendant argues that a new trial was not warranted in this case because the verdict was supported by competent and substantial evidence (Initial Brief at p. 38). Writing for the majority as an associate judge, now Justice Pariente specifically limited the majority's holding as follows:

> We reverse because the trial court gave a confusing and misleading instruction, which was also an incomplete statement of the law concerning a subsequent accident.

Gross v. Lyons, 23 Fla. L. Weekly at D1163 (Fla. 4th DCA May 13, 1998). Even the dissent agreed that a new trial was warranted on all issues. Id. at D1165. (Warner, J., concurring in part and dissenting in part).

Under Point II of her brief, Defendant attempts to convince this court to reinstate the original jury verdict because under her view of the evidence, the verdict was supported. However, this is not the standard of review in these circumstances. Instead, the Fourth District held as a matter of law that the trial court gave a misleading jury instruction, which this court has previously held necessitates a new trial. Florida Power & Light Co. v. McCollum, 140 So. 2d 569 (Fla. 1962); See also, Goldschmidt v. Holman, 571 So. 2d 422, 425 (Fla. 1990). Thus, the Fourth District reversed on a matter of law, not on a matter of fact. Notwithstanding Defendant's view of the evidence, such view is irrelevant to this court's inquiry.

POINT II

THE TRIAL COURT PROPERLY GRANTED THE DIRECTED VERDICT ON CAUSATION, AND THE FOURTH DISTRICT IMPROPERLY REVERSED ON THAT ISSUE

There was no causation issue here. The Defendant presented no evidence that the July 1992 accident was not responsible for at least some portion of the Plaintiff's injuries. The Defendant admitted liability. Both Defendant's experts agreed that the Plaintiff suffered some injury in the accident (T 688; 728-731). She went to the hospital and saw a doctor four days later (T 136-137). She had no pain before the accident, but substantial pain afterwards (T 325). The Defendant's experts conceded that the Plaintiff sustained some injury in the July 1992 accident and that her emergency room hospital bill and some portion of Dr. Baynham's bills were reasonable and necessary (T 610-611, 685, 688, 749-750, 752). No witness testified that the July 1992 accident did not cause the Plaintiff's injuries in some respect.

There was no evidence from which the jury could find that some intervening cause produced the accident or that the damages she suffered were not "proximately caused by any injury resulting from the accident." Davis v. Sobik's Sandwich Shops, Inc., 351 So. 2d 17, 19 (Fla. 1977). The record contains no evidence to support the Defendant's contention that the July 1992 accident was not the legal cause of the Plaintiff's injuries. The directed verdict on causation was improperly reversed by the Fourth District and should be affirmed by this court.

CONCLUSION

This court should affirm the Fourth District's ruling that the original tortfeasor was properly held responsible for Plaintiff's injuries in this case. A new trial should be conducted in this case on the issues of economic damages, non-economic damages and

permanency, however, the Fourth District's reversal of the directed verdict on causation should be reversed by this court.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail this 15th day of January, 1999 to:

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