Filing # 45831438 E-Filed 08/29/2016 11:57:11 PM

IN THE SUPREME COURT
STATE OF FLORIDA

JOYCE C. SHAW and
DAVID "RUSTY" SHAW,

Petitioners,

vs.

Sup. Ct. Case No. SC16-118
D.C.A. Case No. 1D15-3361
Cir. Ct. Case No. 15-17 CA

MARK HUNTER, in his official capacity as the Sheriff of Columbia County, Florida, and MARTIN LEE,

Respondents,
_____/

RECEIVED, 08/29/2016 11:58:47 PM, Clerk, Supreme Court

PETITIONERS' REPLY BRIEF ON THE MERITS

On Petition for Review from the District Court of Appeal,
First District,
State of Florida

George T. Reeves
Fla. Bar No. 0009407
Davis, Schnitker, Reeves & Browning, P.A.
Post Office Drawer 652
Madison, Florida 32341
(850) 973-4186
Fax No. (850) 973-8564
Email: tomereeves@earthlink.net

ATTORNEYS FOR PETITIONERS

TABLE OF CONTENTS

Table of Contents i

Table of Citations iii

Preliminary Statement.....1

Reply-Argument

I. IN THE ARGUMENTS OF THE SHAWS, SHERIFF AND AMICI ALL RISE OR FALL ON THE INTENT OF THIS COURT IN CREATING AND MAINTAINING THE EXCEPTION TO THE HOME VENUE PRIVILEGE SET OUT IN *BOARD OF COUNTY COMMISSIONERS OF MADISON COUNTY V. GRICE*, 438 SO.2D 392 (FLA. 1983). IF THE INTENT WAS TO SAFEGUARD PUBLIC FUNDS, THE SHAWS MUST PREVAIL BECAUSE THERE IS NO RATIONAL REASON TO LIMIT THE *GRICE* EXCEPTION TO INSTANCES WHERE THE DEFENDANTS ARE ALLEGED TO BE JOINTLY AND SEVERALLY LIABLE.....2

II. AS FOUND BY THE FOURTH DISTRICT COURT IN *SHANDS TEACHING HOSP. AND CLINICS, INC. V. SIDKY,* 936 SO.2D 715 (FLA. 4TH DCA 2006), THE ENACTMENT OF CH. 81-317 (LAWS OF FLA.) DOES NOT REPEAL THE *GRICE,* EXCEPTION TO THE HOME VENUE PRIVILEGE.....4

Conclusion 5

Certificate of Service.....6

Certificate of Compliance.....7

TABLE OF CITATIONS

FLORIDA CASES PAGES

Bd. of County Comm'rs v. Grice,
438 So.2d 392 (Fla. 1983).....*passim*

City of Boca Raton v. Walker,
354 So.2d 440 (Fla. 3d DCA),
cert. denied, 359 So.2d 1221 (1978).....3

County of Volusia v. Atlantic International Investment Corp.,
394 So.2d 477 (Fla. 1st DCA 1981).....3

Hunter v. Shaw,
182 So.3d 784 (Fla. 1st DCA 2015).....1

Lake County v. Friedel,
387 So.2d 514 (Fla. 5th DCA 1980).....3

Liberty Mutual Insurance Co. v. Ford,
392 So.2d 354 (Fla. 4th DCA 1981).....3

State Department of Transportation v. Bromante,
365 So.2d 388 (Fla. 4th DCA 1979).....3

Wagner v. Nova University, Inc.,
397 So.2d 375 (Fla. 4th DCA 1981).....3

FEDERAL CASES:

Fergueson v. Barnhart,
52 Fed.Appx. 112 (10th Cir. 2002).....3

New v. Department of Veterans Affairs,
142 F.3d 1259 (Fed. Cir 1998) 3

Real v. Bunn-O-Matic Corp.,
195 F.R.D. 618 (N.D. Ill. 2000).....3

STATUTES:

§ 768.28(1), Fla.Stat.....4-5

RULES:

Fla.R.App.P. 9.210(a)(2).....7

PRELIMINARY STATEMENT

The Petitioner, JOYCE C. SHAW (Plaintiff before the trial court) will be referred to herein as "JOYCE SHAW". The Petitioner, DAVID "RUSTY" SHAW (Plaintiff before the trial court) will be referred to herein as "DAVID SHAW". Both JOYCE SHAW and DAVID SHAW may be referred to herein collectively as the SHAWS or the Petitioners.

The Respondent, MARK HUNTER, in his official capacity as the Sheriff of Columbia County, Florida, (Defendant before the trial court) will be referred to in this Brief as the "SHERIFF". The Respondent, MARTIN LEE (Defendant before the trial court) who did not appeal the subject order or make an appearance before the District Court of Appeal below will be referred to in this Brief as the "DEPUTY".

The record was provided by the SHERIFF in the form of an appendix to his Initial Brief before the District Court of Appeal below and will be cited to by the PDF page number (as the appendix does not have numbers on the bottom of each page) as follows: (Appendix at page ___).

The opinion of the First District below was reported as *Hunter v. Shaw,* 182 So.3d 784 (Fla. 1st DCA 2015). The First District's opinion below will be cited by its West Citation page number.

REPLY ARGUMENT

I.

IN THE ARGUMENTS OF THE SHAWS, SHERIFF AND AMICI ALL RISE OR FALL ON THE INTENT OF THIS COURT IN CREATING AND MAINTAINING THE EXCEPTION TO THE HOME VENUE PRIVILEGE SET OUT IN *BOARD OF COUNTY COMMISSIONERS OF MADISON COUNTY V. GRICE*, 438 SO.2D 392 (FLA. 1983). IF THE INTENT WAS TO SAFEGUARD PUBLIC FUNDS, THE SHAWS MUST PREVAIL BECAUSE THERE IS NO RATIONAL REASON TO LIMIT THE *GRICE* EXCEPTION TO INSTANCES WHERE THE DEFENDANTS ARE ALLEGED TO BE JOINTLY AND SEVERALLY LIABLE.

In reply to the Answer Brief and the briefs of *amici*, the SHAWS, would simply point out that neither the SHERIFF nor the *amici*, ever squarely responded to the question asked by the SHAWS in the Initial Brief. The question was as follows:

> As this court has affirmatively stated that (1) the reason for the exception is to save public money, and (2) multiple lawsuits increase[sic] costs incurred in the operation of the courts, the question must be asked, "Why would this court wish to save public money where the defendants are alleged to be 'jointly and severally' liable, but not wish to save public money where the defendants are alleged to be liable in some other way?" Of course such a position is unreasonable and should not be attributed to an opinion of this court. Rather, where the application of the home venue privilege would result "multiple lawsuits" which would otherwise be "tried in a single proceeding" the *Grice,* exception grants the trial court discretion to "retain the entire case, sever and transfer the cause of action against the entity asserting the privilege if it is severable, or transfer the entire case" based on "considerations of justice, fairness, and convenience

under the circumstances of the case." *Grice,* at 394-395.

Initial Brief at page 24.

The SHERIFF does not dispute the premise of the question. The SHERIFF recognizes that the *Grice,* court created the exception to safeguard public money where the strict application of the home venue privilege resulted in the creation of multiple lawsuits. In his Answer Brief, the SHERIFF states:

> In *Grice,* **the Court's pivotal concern was whether application of the privilege promoted economical government**. *Grice II* at 394-395. This Court's original concern, when recognizing the privilege, was about the cost imposed on the defendant agency in defending an action. *Carlile,* 354 So.2d at 3664; *Smith v. Williams,* 350 So.2d 844, 846-847 (Fla.1948). By the time of *Grice,* however, the Court had become concerned about the burden the privilege imposed on the operation of the court system, due to the fact that applying the privilege could result in cases having to be litigated twice. *Grice II* at 394-395.
>
> * * *
>
> The Court concluded that modern "methods of communication and transportation have weakened the policy reasons supporting the privilege while current crowded court docket conditions have **strengthened the policy reasons for avoiding duplicative litigation if possible**." *Grice II* at 394. Given these modern advances, the Court decided that the scales tipped in favor of requiring public agencies to bear the burden of litigation rather than the court system in a tort case where the agency was alleged to be a joint tortfeasor. *Grice II* at 395.

Answer Brief at 18-20. (Emphasis supplied)

But the question posed by the SHAWS still remains unanswered. "Why would this

court wish to save public money where the defendants are alleged to be 'jointly and severally' liable, but not wish to save public money where the defendants are alleged to be liable in some other way?" Neither the *Grice,* opinion nor the opinion of the First District Court below, give any assistance to the SHERIFF in this regard. In fact, there is no good reason this court should wish to safeguard the public treasury where the defendants are alleged to be "jointly and severally" liable but not otherwise.

This is also an important question looking forward. This court's decision in the instant case must be guided by its understanding of the purpose of the home venue privilege as well as the purpose of the exception. The SHAWS would submit that this is the paramount issue. If the purpose of the home venue privilege is to minimize expenditure of public funds and manpower, then, an exception to the home venue privilege which gives the trial court the discretion to dispense with the home venue privilege where its strict application may result in multiple lawsuits makes perfect sense. However, the limitation of such exception to only those instances where the defendants are alleged to be "jointly and severally" liable makes no sense.

Further, such a limitation is not consistent with *Grice,* itself. In *Grice,* this court made clear that it was not using the term "joint tortfeaser" to limit the use of

the exception to situation where the liability of the defendants was alleged to be "joint and several." In *Grice,* this court recounted that the home venue privilege was to safeguard public moneys and then held:

> Frequently, however, these beneficial purposes are not furthered when the governmental defendant is sued as a **joint tortfeasor**. **In such cases** the district courts, in attempting to follow the dictates of *Carlile,* have been ordering severance of lawsuits that would normally be tried in a single proceeding. *See, e.g.*[1]*, Wagner v. Nova University, Inc.,* 397 So.2d 375 (Fla. 4th DCA 1981); *County of Volusia v. Atlantic International Investment Corp.,* 394 So.2d 477 (Fla. 1st DCA 1981); *Liberty Mutual Insurance Co. v. Ford,* 392 So.2d 354 (Fla. 4th DCA 1981); *Lake County v. Friedel,* 387 So.2d 514 (Fla. 5th DCA 1980); *State Department of Transportation v. Bromante,* 365 So.2d 388 (Fla. 4th DCA 1979); *City of Boca Raton v. Walker,* 354 So.2d 440 (Fla. 3d DCA), *cert. denied,* 359 So.2d 1221 (1978).

Grice, at 394. (Emphasis supplied)

In his Answer Brief, the SHERIFF recognizes that the listed cases include cases where the defendants are alleged to be jointly and severally liable and cases where they are not. Answer Brief at page 12-13. However the SHERIFF does not believe the *Grice,* court when it gives these representative examples as showing instances of "where the governmental defendant is sued as a joint tortfeaser" and

---

[1]The abbreviation "e.g." means "for example". *See, Fergueson v. Barnhart,* 52 Fed.Appx. 112, 115 (10th Cir. 2002) ("'*e.g.*" ... is an abbreviation for the Latin phrase "*exempli gratia*" and is used to 'introduce representative examples.'"); *New v. Department of Veterans Affairs,* 142 F.3d 1259, 1265 (Fed. Cir 1998) ("e.g., [is] the short form of *exempli gratia*, which means 'for the sake of an example.'")

the meaning it attributes to this phrase. The *Grice,* court's declaration of what it meant by the above phrase should be respected by this court and the decision of the district court below quashed.

II

AS FOUND BY THE FOURTH DISTRICT COURT IN *SHANDS TEACHING HOSP. AND CLINICS, INC. V. SIDKY,* 936 SO.2D 715 (FLA. 4TH DCA 2006), THE ENACTMENT OF CH. 81-317 (LAWS OF FLA.) DOES NOT REPEAL THE *GRICE,* EXCEPTION TO THE HOME VENUE PRIVILEGE.

In part III of the Answer Brief, the SHERIFF argues that the addition of the following phrase:

> Any such action may be brought in the county where the property in litigation is located or, if the affected agency or subdivision has an office in such county for the transaction of its customary business, where the cause of action accrued.

§ 768.28(1), Fla.Stat.

necessarily eliminates the *Grice*, exception.

In the Answer Brief the SHERIFF correctly recognizes that the Fourth District Court's opinion in *Shands Teaching Hosp. and Clinics, Inc. v. Sidky,* 936 So.2d 715 (Fla. 4th DCA 2006) does not interpret the above phrase the way the SHERIFF interprets it. Rather the *Sidky,* court interpreted the use of the permissive term "may" (rather than the mandatory term "shall") merely gave

additional venue options and left open the door to exceptions to the home venue privilege like in *Grice. Sidky,* at 722. Had the Legislature intended to foreclose all exceptions to the home venue privilege, it could have easily used the term "shall" and given an exclusive list of venue options. This would have foreclosed further debate and action by the court. In this case, this court choosing not to use the term "shall" is dispositive.

CONCLUSION

The First District's opinion below should be quashed.

Respectfully submitted,
DAVIS, SCHNITKER, REEVES
& BROWNING, P.A.

By: /s/ George T. Reeves

George T. Reeves
Fla. Bar No. 0009407
Post Office Drawer 652
Madison, Florida 32341
(850) 973-4186
Fax No. (850) 973-8564
Email: tomreeves@earthlink.net

ATTORNEYS FOR THE PETITIONERS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and forgoing has been furnished to:

John W. Jolly, Jr.
P.O. Box 37400
Tallahassee, FL 32315
jwj@jollylaw.com
kmt@jollylaw.com
Attorney for the Respondents

Jason Vail
P.O. Box 37400
Tallahassee, FL 32315
ejv@jollylaw.com
Attorney for the Respondents

Stephen A. Smith
P.O. Box 1792
Lake City FL 32056-179
tomi@bellsouth.net
Attorney for the Petitioners

Duane E. Thomas
206 Marion Street
Lake City FL 32025
duane@duanethomas.org
paula@duanethomas.org
Attorney for the Petitioners

Rachel Nordby
Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399-1050
rachel.nordby@myfloridalegal.com
Attorney for Amici - State of Fla.

Robert Wayne Evans
Matthew D. Stefany
906 North Monroe Street, Suite 100
Tallahassee, Florida 32303
revans@anblaw.com
mstefany@anblaw.com
Attorney for Amici -
Fla. Sheriff Assoc.

by e-service on August 29, 2016.

/s/ George T. Reeves
George T. Reeves

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Fla.R.App.P. 9.210(a)(2).

/s/ George T. Reeves
George T. Reeves