

IN THE SUPREME COURT OF FLORIDA

CASE NO. SC18-657
L.T. CASE NOS. 1D17-2065, 242014CA000051CAAXMX

CHARLES A. LIEUPO,

Petitioner,

v.

SIMON'S TRUCKING, INC.,

Respondent.

PETITIONER'S BRIEF ON JURISDICTION

On Discretionary Review From A Decision
Of The First District Court Of Appeal

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RECEIVED, 05/10/2018 04:28:26 PM, Clerk, Supreme Court

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STATEMENT OF THE CASE AND FACTS

The sole issue presented to, and decided by, the First District Court of Appeal below was one of law – whether, in the words of the statute, section 376.313(3), Florida Statutes (2011), permits one to recover “all damages resulting from a [covered] discharge or other condition of pollution;” or, notwithstanding the statute’s plain language, one may recover only *some* damages, excluding those attributable to personal injuries. (A. 4).^{*} Agreeing with Respondent, the First District concluded that this Court’s decision in *Curd v. Mosaic Fertilizer, LLC*, 39 So. 3d 1216 (Fla. 2010), “precludes personal injury claims from being brought under section 376.313(3)” (which is a part of the Water Quality Assurance Act of 1983) (A. 5) and, accordingly, reversed the judgment in favor of Petitioner, Mr. Lieupo. (A. 3). However, recognizing that it was difficult to reconcile its conclusion with the language of the pertinent statutes, the court certified the following question as one of great public importance:

DOES THE PRIVATE CAUSE OF ACTION CONTAINED IN
SECTION 376.313(3), FLORIDA STATUTES, PERMIT
RECOVERY FOR PERSONAL INJURY?

(A. 9).

As reflected in the court’s opinion, Mr. Lieupo filed an action against Respondent seeking damages for serious personal injuries allegedly inflicted by

^{*}(A. __) refers to the opinion below, found in the Appendix to this Brief.

exposure to battery acid spilled from one of Respondent's tractor-trailers when Mr. Lieupo was dispatched to tow the truck away after it had been involved in an accident. (A. 4). Mr. Lieupo "filed his complaint under section 376.313(3), Florida Statutes, which imposes strict liability for the discharge of certain types of pollutants." (A. 4). Respondent "argued that Lieupo could not seek recovery under section 376.313(3) because that statute did not permit recovery for personal injury. The trial court rejected this argument, and the case proceeded to trial." (A. 4). The jury found in Mr. Lieupo's favor, awarding substantial damages. (A. 4). Respondent again raised the argument that section 376.313(3) does not permit recovery of damages resulting from personal injuries in a motion for judgment notwithstanding the verdict, and the trial court again rejected it. (A. 4).

This Court's *Curd* decision, which the First District concluded required the result it reached, involved "whether the private cause of action recognized in section 376.313(3), Florida Statutes (2004), allows commercial fishermen to recover damages for their loss of income despite the fact that the fishermen do not own any property damaged by the pollution." (A. 6) (quoting from 39 So. 3d at 1220). It did *not* involve any claim for damages resulting from personal injuries. (A. 6). To arrive at an affirmative answer to that question, this Court looked to the definition of "[d]amage" found in section 376.031(5), notwithstanding that section expressly states that it applies *only* to sections 376.011 to 376.21 (i.e., the Oil Spill

Prevention and Pollution Control Act of 1970). (A. 5). That definition excepts injuries to “human beings.” (A. 5).

Because of this, the First District concluded that this Court’s reliance on the section 376.031(5) definition of “[d]amage” was “part of the . . . holding and not dicta.” (A. 6). However, the court said that the question was a close one “because the [*Curd*] opinion alternately states that the court relied solely on the plain language of section 376.313(3) to reach its decision and that the court relied on an *in pari materia* reading of the definition of ‘damages’ from the 1970 act.” (A. 6). Moreover, it is clear from the following paragraph, which summarizes Mr. Lieupo’s position, that, although the First District felt itself bound by *Curd*’s reliance on the section 376.031(5) definition of “[d]amage,” it believed that, in this case, such reliance would produce a result at odds with the plain meaning of the pertinent statutes:

Lieupo argues that *Curd* was not a personal injury case, and the court could not have intended to hold that this more restrictive definition of damages should be applied to prohibit all personal injury claims from being brought under the 1983 act. Such a holding would contradict the plain language of section 376.031, which states the “damages” definition only applies to the 1970 act. It would also contradict the court’s statement that it reached its decision based “solely” on the “plain language” of sections 376.313(3) and 376.30, and the court’s finding that the 1983 act should be liberally construed. Instead, Lieupo suggests the supreme court merely looked to the 1970 act’s definition for “guidance” and did not reach the question of whether *only* those damages available under the 1970 act could be sought under the 1983 act.

(A. 8) (footnote omitted).

The First District found it “difficult to discern” whether this Court in *Curd* “actually intended for th[e] definition of damages from the 1970 act to be applied to all causes of action brought under the 1983 act.” (A. 9). Accordingly, it certified the following question as one of great public importance:

DOES THE PRIVATE CAUSE OF ACTION CONTAINED IN SECTION 376.313(3), FLORIDA STATUTES, PERMIT RECOVERY FOR PERSONAL INJURY?

(A. 9).

SUMMARY OF THE ARGUMENT

This Court has discretionary jurisdiction to review the decision below because it passes upon a question certified by the First District to be of great public importance. Art. V, § 3(b)(4), FLA. CONST.; Fla. R. App. 9.030(a)(2)(A)(v). There can be little dispute about whether the question certified actually *is* of great public importance, given that it relates to the damages recoverable for pollution resulting from a violation of the 1983 Act, which seeks to protect our State’s potable water supply.

This Court also has discretionary jurisdiction because, by concluding that the Court held in *Curd* that actions for personal injury damages could not be prosecuted under section 376.313(3), the First District’s decision misapplies and,

therefore, expressly and directly conflicts with, *Curd*. Art. V, § 3(b)(3), FLA. CONST.; Fla. R. App. P. 9.030(a)(2)(A)(iv).

Finally, because the First District’s decision interprets this Court’s holding in *Curd* far too broadly and candidly acknowledges that it found the Court’s opinion confusing, the Court should exercise its jurisdiction to resolve that confusion and give full effect to the Legislature’s clearly expressed intent that those harmed by a violation of the 1983 Act – and especially those suffering serious personal injuries – are entitled to maintain an action for “all damages” resulting from that violation.

ARGUMENT

I. THE DECISION BELOW PASSES UPON A QUESTION CERTIFIED TO BE OF GREAT PUBLIC IMPORTANCE

This Court has discretionary jurisdiction to review the decision below because it passes upon a question certified by the First District to be of great public importance. Art. V, § 3(b)(4), FLA. CONST.; Fla. R. App. 9.030(a)(2)(A)(v).

Three prerequisites must be satisfied for the Court to have jurisdiction based on a certified question: (1) “the district court of appeal [must] pass upon the question certified by it to be of great public importance;” (2) “there must be a district court ‘decision’ to review;” and (3) “the question must be in fact ‘certified’ by a majority decision of the district court.” *Floridians for a Level Playing Field v. Floridians against Expanded Gambling*, 967 So. 2d 832, 833 (Fla. 2007). Here,

it is clear that those prerequisites are satisfied. The First District actually passed upon the issue certified; it was done in an opinion; and all three judges concurred.

There can also be little dispute about whether the question certified actually *is* of great public importance. The 1983 Act of which section 376.313(3) is a part addresses pollution of Florida’s surface and ground waters. As the Act recites, “the preservation of surface and ground waters is a matter of the highest urgency and priority, as these waters provide the primary source of potable water in this state.” § 376.30(1)(b), Fla. Stat. (2011). Accordingly, the Legislature has mandated that, because the provisions of the 1983 Act – including section 376.313(3) – are “necessary for the general welfare and the public health and safety of the state and its inhabitants,” they “shall be liberally construed.” § 376.315, Fla. Stat. (2011). Clearly, whether Floridians may sue under the “all damages” language of section 376.313(3) for personal injury damages caused by pollution of the state’s surface or ground waters is a question of great public importance.

II. THE DECISION BELOW MISAPPLIES AND, THEREFORE, EXPRESSLY AND DIRECTLY CONFLICTS WITH, THIS COURT’S DECISION IN *CURD*.

This Court also has discretionary jurisdiction to review the decision below because it misapplies and, therefore, expressly and directly conflicts with the Court’s decision in *Curd*. Art. V, § 3(b)(3), FLA. CONST.; Fla. R. App.

9.030(a)(2)(A)(iv); *Hayes v. State*, 94 So. 3d 452, 455 (Fla. 2012) (explaining that misapplication of the Court’s decisions creates express and direct conflict under article V, section 3(b)(3), of the Florida Constitution).

In reaching the conclusion that it was bound by this Court’s decision in *Curd*, and that *Curd* required a reversal of Mr. Lieupo’s judgment, the First District held that this Court had held that the definition of “[d]amage” found in section 376.031(5) applied to all actions brought pursuant to section 376.313(3), thus precluding an action for personal injury damages caused by a covered act of pollution. (A. 9). Respectfully, the First District’s decision was based on a misreading – and, therefore, a misapplication – of *Curd*.

To conclude this Court intended in *Curd* to bar actions under section 376.313(3) for personal injury damages caused by a covered act of pollution, one would first have to conclude that:

- The Court was deciding an issue not presented by the facts of the case, which did not involve any claim for personal injury damages. *See, e.g., Dade Cty. v. Brigham*, 47 So. 2d 602, 603 (Fla. 1950) (stating that the Court’s opinions “must be construed in the light of the facts and circumstances of the case which was then before [it] for decision”).
- In violation of what it has repeatedly called “[t]he first rule of statutory interpretation,” *e.g., Streeter v. Sullivan*, 509 So. 2d 268, 271 (Fla. 1987),

the Court either overlooked or ignored the plain, unambiguous, language of section 376.313(3) that permits a cause of action for “all damages” resulting from a covered act of pollution.

- Again in violation of what it has repeatedly called “[t]he first rule of statutory interpretation,” the Court either overlooked or ignored the plain, unambiguous, language of section 376.315, in which the Legislature mandated that the 1983 Act, including section 376.313(3), is to be “liberally construed.”
- And, again in violation of what it has repeatedly called “[t]he first rule of statutory interpretation,” the Court either overlooked or ignored the plain, unambiguous, language of section 376.031, which states that the definitions contained in that section – including the definition of “[d]amage” – apply *only* to the 1970 Act (codified as sections 376.011 to 376.21).
- The Court either overlooked or ignored the fact that, although section 376.205 (which authorizes a private cause of action for violations of the 1970 Act) and section 376.313(3) (which authorizes a private cause of action for violations of the 1983 Act) are in many ways similar, they differ in one very significant respect – the former expressly limits recovery to “damages, as defined in s. 376.031;” while the latter permits the recovery of “all damages.”

- The Court intended to read the adjective “all” out of section 376.313(3), although “[i]t is an elementary principle of statutory construction that significance and effect must be given to every word, phrase, sentence, and part of the statute if possible, and words in a statute should not be construed as mere surplusage.” *Hechtman v. Nations Title Ins. of N.Y.*, 840 So. 2d 993, 996 (Fla. 2003).

To reach such conclusions regarding the Court’s intent in *Curd* would lead to a truly absurd result – that, while the Legislature intended to permit the recovery of damages by commercial fishermen for loss of income even though they do not own the property damaged by pollution, it did not intend to permit the recovery of damages for serious, life-altering, injuries caused by a covered act of pollution. It would also raise a serious separation of powers issue given the clear and unambiguous language used by the Legislature in the pertinent statutes. It is inconceivable that this Court could have intended such a result in *Curd*.

III. THIS COURT SHOULD EXERCISE ITS JURISDICTION, AND RESOLVE ANY POSSIBLE CONFUSION THAT MAY HAVE ARISEN AS THE RESULT OF *CURD*

As explained in the preceding point, Mr. Lieupo believes that the First District misread – and, therefore, misinterpreted – the intended breadth of the *Curd* decision. He believes that, while this Court looked to the section 376.031(5) definition of “[d]amage” for guidance in determining whether the fishermen could

seek recovery under section 376.313(3) even though they did not own the damaged marine life, it did not hold that definition applied to *all* actions under section 376.313(3). The Court was not asked to decide whether *only* those items of damages listed in section 376.031(5) are recoverable in an action under section 376.313(3), and it was not necessary for it to do so to resolve the issue before it.

To conclude that the Court intended to hold that actions for personal injury damages could not be prosecuted under section 376.313(3) – an issue that was not involved in the case – is to read far too much into the Court’s opinion. The First District, however, has done precisely that, candidly acknowledging that it found the Court’s decision confusing. This Court should exercise its jurisdiction to resolve that confusion and give full effect to the Legislature’s clearly expressed intent that those harmed by a violation of the 1983 Act – and especially those suffering serious personal injuries – are entitled to maintain an action for “all damages” resulting from that violation.

CONCLUSION

For the foregoing reasons, Mr. Lieupo requests that this Court exercise its discretion to review the First District’s decision below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by email to the following this 10th day of May, 2018:

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The undersigned hereby certifies that this brief complies with the font requirements set forth in Florida Rule of Appellate Procedure 9.210 by using Times New Roman 14-point font.

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