IN THE SUPREME COURT OF FLORIDA

CHERIE WILSON-WATSON,

Plaintiff/Petitioner,

vs.

Case No. SC00-1989
DCA No. 2D99-3521
Circuit Court Case No. 96-0674-CA-01

DAX ARTHRITIS CLINIC, INC.,
a Florida Corporation, and RICHARD A.
SAITTA, M.D.,

Defendants/Respondents.

_____/

PETITIONER'S SECOND AMENDED REPLY BRIEF

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TABLE OF CONTENTS

STATEMENT OF THE FACTS

Respondent complains that Petitioner has failed to accurately state the facts, or has stated facts unsupported by the record, in two respects. Petitioner disagrees as follows.

The Issue of Whether the Needle Could be Tested

Such conclusion is common knowledge and readily available in public literature:

> Testing of needles or other sharp instruments implicated in an exposure, regardless of whether the source is known or unknown, is not recommended. The reliability and interpretation of findings in such circumstances are unknown, and testing might be hazardous to persons handling the sharp instrument. From the AIDS Education Global Information System (AEGIS) at http://www.aegis.com/ (Last visited July 5, 2001)

The Issue of Whether AIDS patients were treated by Respondents

Respondent next complains that Petitioner misled this court by implying that Respondent treated patients for AIDS. That was not the intent of counsel nor does that conclusion follow from the text of the brief. The record does reflect that no blood was ***drawn*** from the clinic patients with AIDS, but does not reflect that needles were not otherwise contaminated by these patients. Nor does it reflect what patients upon which needles were used may have been carrying the AIDS virus and were either unaware of that fact or failed to advise the doctor of it. (Deposition of Respondent P 26, L 15; P 27, L 9-12; P 29, L 19-23; P 30, L 21 - P 31, L 2; P 55, L 18-21)

ARGUMENT

By creating a bright line rule that fear of AIDS is unreasonable as a matter of law absent actual contamination of the needle, the district court fails to incorporate the realities of today's world. The fear of AIDS is a subject that permeates all societies. It is an epidemic of catastrophic proportions. Special precautionary procedures have been implemented in all phases of life experience that may subject a person to AIDS contamination. Rubber gloves are ubiquitous. Television warnings saturate that media. Schoolchildren are routinely subject to education regarding the disease and its prevention. To declare that fear of AIDS is unreasonable when one's body is accidently punctured by a needle of unknown lineage is in itself unreasonable.

> I was a soldier, and I know of no enemy in war more insidious or vicious than AIDS, an enemy that poses a clear and present danger to the world. Secretary of State Colin Powell, Time, July 9, 2001, p. 15.

This quote of General Powell speaks for mankind's concern about the AIDS virus.

To say that fear of AIDS is unreasonable as a matter of law is to create a fiction. The fact is there is fear and it is reasonable. If the district court decision were somehow approved, the holding would have to be that notwithstanding a reasonable fear of AIDS, one may not recover for that fear. In order to so hold, there would have to be some compelling necessity to override the right of access to the courts for redress of real injury. But there is none. The true result would be that yet another impediment to the spread of the disease would be judicially eliminated: accountability for negligent disposal of contaminated needles by health care providers.

It is for the jury to determine the reasonableness of the fear under all the circumstances. A bright line rule cannot possibly accommodate all factual

variations and will prove to be inadequate in its application. The potential source of the virus may be testable or not; the needle may be used vs. new; the incident may have occurred in a hospital vs. a home. It is the extent and nature of these variations that determines whether a reasonable person would suffer fear of AIDS. Under some circumstances fear of AIDS may indeed be unreasonable, but not in all circumstances. It is the function of the jury to sort this out.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular U. S. Mail this __ day of August, 2001 to Bonita Kneeland Brown, Esquire, Fowler, White, Gillen, Boggs, Villareal & Banker, P. A., Post Office Box 1438, Tampa, Florida 33601.

By: _____
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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing document has been prepared using font size Times New Roman 14.

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