SUPREME COURT OF FLORIDA

LAWRENCE TAYLOR and MARIE TAYLOR, as Husband and Wife,

Petitioner,

vs.

SCHOOL BOARD OF BREVARD COUNTY, FLORIDA

Respondent.
_____/

CASE NO. SC01-1924

5DCA Case No. 5D00-842

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE FACTS[1]

By his Complaint, the Petitioner, Lawrence Taylor (hereinafter Taylor), sought damages for personal injuries which allegedly resulted from the negligent maintenance of a school bus motorized wheelchair lift.[2] The injury occurred on October 5, 1995. At that time, Taylor was employed as a bus attendant for the School Board. As part of his job Taylor assisted wheelchair bound students in boarding school buses. Taylor had been employed by the School Board as a bus attendant since 1985. [R:181]. Taylor had been working on buses equipped with wheelchair lifts since 1990. [R:186].

According to Taylor's Complaint, at paragraphs 5 and 6, there had been a problem with the lift mechanism which had been reported to the Transportation Department, and repairs were effected thereon. "Shortly after" the bus was returned to service, the accident occurred. [R:2]. According to his Complaint, his injury occurred when the wheelchair lift which he was about to lower "suddenly and unexpectedly" fell from its upraised position, striking him on the head, shoulder and arm. [R:2].

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[1] Plaintiffs' Statement of the Case is fair and accurate.

[2] His wife, Plaintiff Marie Taylor, has brought a derivative consortium claim.

The bus, including the wheelchair lift, had undergone periodic maintenance service on October 3, 1995, two days prior to the accident. [R: 607]. At that time, as part of the routine preventative maintenance service, the wheelchair lift and the emergency release lever would have been checked to make certain same were operational. [R:156-57].[3] Further, a few days earlier, on September 29, 1995, the wheelchair lift "bound up" and it was serviced to repair same. [R:608]. Nevertheless, the lift fell on October 5, 1995, because rivets holding the plate containing the emergency release lever had evidently worn out, allowing the plate to pop loose and the spring mechanism to fall out. [R:489].[4]

Prior to taking a bus out on the road, the bus driver was required to inspect the bus, and one element of such inspection is to operate the wheelchair lift. [R:221]. It was the bus driver's job to run the lift prior to taking the bus out. [R:222, 364]. In his deposition given in the worker's compensation case, Taylor testified that "see when you get on the bus, I'll tell you, when you get on the bus, the bus driver is supposed

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[3] The Petitioners' statement that "[t]he paperwork" does not indicate that such inspection was made ignores the above deposition testimony.

[4] The inference of the Plaintiffs that the relevant mechanism had been repaired on July 4, 1995, is not supported by the evidence. Though Wayne Wardwell initially testified that the "fold plate lock assembly" was part of the emergency release mechanism, he admitted latter in his deposition that he was not sure the purpose of such mechanism but was certain that the lift had not fallen on that occasion. [R:465-66].

to check that lift. I'm not putting it on him. Maybe check it once a week. But this day, when we got in the bus, he was late a little bit. We got in, we took off...." [R:562]. When the accident occurred, this was the first time the lift had been run that day. [R:225].

After his accident, Taylor applied for worker's compensation benefits. He received, and continues to receive, such benefits to date. [R:204].

As a bus attendant, Taylor reported directly to the bus driver and was also supervised by the South Area Transportation Supervisor, Jessica Shaffer, one of three area transportation supervisors employed by the School Board. Taylor, as well as the alleged negligent maintenance employee, were School Board Transportation Department employees assigned to the South Area Transportation Facility in Melbourne, Florida. [R:349-50]. Though Ms. Shaffer, the South Area Transportation Supervisor, and Wayne Wardwell, the South Area Maintenance Shop Supervisor, did not customarily supervise the other's subordinates, they did so when necessary, given their location on the same property. [R:349-50].

Though the Petitioners contend that there exists a "de facto policy" prohibiting bus drivers and attendants from going into the shop, located 50 to 100 feet from the South Area Depot office, the evidence is clear that there was no such countywide rule or policy. [R:389]. Moreover, as to the South Area Transportation site, there was no

enforcement of any separation of bus and maintenance personnel, the Maintenance Supervisor having no objection in this "small organization" to bus personnel being in the shop relative to business. [R:420-21]. Taylor acknowledged that he did not believe he was restricted from inquiring from South Area Maintenance personnel as to the status of his bus. [R:236]. On the other hand, there is no record evidence suggesting that maintenance personnel were in any way restricted from contact with bus personnel. In fact, if a bus broke down maintenance personnel would go to the site, and if necessary, bring the bus back to the South Area Transportation Facility, as occurred in this case. [R:282-86].

The trial court conducted a hearing on said motion on June 3, 1999. After hearing argument of counsel and reviewing legal memoranda, and case authority supplied by both parties, the trial court, granted the School Board's Motion for Summary Judgment, finding the unrelated works exception not to apply. Final Judgment on behalf of the School Board was entered June 15, 1999. [R:186-88].

The Petitioners appealed. The Fifth District Court of Appeals heard argument of counsel and affirmed the Trial Court's summary judgment. The Fifth District held, in pertinent part, that because both Taylor and the allegedly negligent maintenance employee were transportation department employees, both had as a duty the operation of the wheelchair lift, both worked from the same transportation facility, and both were

primarily involved in the common project of providing bus transportation to School Board students, the unrelated works exception did not apply. Taylor v. School Board of Brevard County, 790 So.2d 1156,1157-58 (Fla. 5th DCA 2001).

Taylor sought conflict review from this Court alleging that the Fifth DCA's decision in Taylor directly and expressly conflicted with the Second DCA's decision in Lopez v. Vilches, 734 So.2d 1095 (Fla. 2nd DCA 1999). This Court exercised discretionary review.

SUMMARY OF THE ARGUMENT

Taylor contends by this appeal that the Fifth DCA erred by applying the "same project" analysis set forth in e.g.: Dade County School Board v. Laing, 731 So.2d 19 (Fla. 3rd. DCA 1999), as opposed to applying what has been referred to as the "bright line test" set forth in Lopez v. Vilches, 734 So.2d 1095 (Fla. 2nd DCA 1999). It is the School Board's position that Fifth DCA's reliance on the "same project" analysis was correct, but that, in any event, the unrelated works exception is inapplicable under either analysis on application of the facts of this case.

The facts show that Taylor was injured as a result of the alleged negligence of a co-employee and he continues to receive workers' compensation benefits as a result. It is well settled that worker's compensation immunity is to be broadly applied to employers. Vause v. Bay Medical Center, 687 So.2d 258 (Fla. 1st DCA 1996). With respect to the unrelated works exception to such immunity, the relevant consideration is whether the injured employee and the negligent employee were involved in the same project. Most Florida courts do not focus on job duties, job titles, educational requirements, or the like. They focus on the ultimate goal of the work performed by the employees. Dade County School Board v. Laing, 731 So.2d 19 (Fla. 3rd. DCA 1999); Vause v. Bay Medical Center, 687 So.2d 258 (Fla. 1st DCA 1996).

Taylor contends that if the "bright line" analysis set forth in Lopez v. Vilches, 734 So.2d 1095 (Fla. 2d DCA 1999) was applied to the facts in this case, he would have been found to have been engaged in unrelated works with respect to the allegedly negligent co-employee. The record shows otherwise. The facts in this case establish that Taylor and the allegedly negligent employee worked at the same job location, for the same division of the employer, with exactly the same purpose in mind, the provision of transportation services to Brevard County school children. On even a more basic level, Taylor operated the wheelchair lift necessary for the transportation of handicapped children that the allegedly negligent maintenance employee maintained and repaired. Thus, Taylor worked at the same job site and with the same job purpose, satisfying the "bright line" analysis.

The School Board asserts, therefore, that the Fifth DCA's finding that Taylor and the allegedly negligent maintenance employee were involved in related works is legally and factually correct.

ARGUMENT

ISSUE: WHETHER TAYLORS' SUIT AGAINST THE SCHOOL BOARD FOR THE ALLEGED NEGLIGENCE OF ITS EMPLOYEE BUS MECHANIC IS PERMITTED UNDER THE UNRELATED WORKS EXCEPTION OF FLORIDA STATUTE 440.11(1).

Introduction:

Pursuant to Fla. Stat. §440.11, the liability of an employer shall be limited to workers' compensation benefits for any employee entitled to recover damages from the employer. The relevant exception thereto is that such immunity shall not be applicable where the injury to the employee was caused by another employee where the employees were assigned "primarily to unrelated works." This has been the law in Florida since 1978. Iglesia v. Floran, 394 So.2d 994 (Fla. 1981). Furthermore, the application of the worker's compensation immunity provided by §440.11 is "broad." Vause v. Bay Medical Center, 687 So.2d 258, 263 (Fla. 1st DCA 1996).

Taylor contends by this appeal that the Fifth DCA erred by applying the "same project" analysis set forth in e.g.: Dade County School Board v. Laing, 731 So.2d 19 (Fla. 3rd. DCA 1999), as opposed to applying what has been referred to as the "bright line test" set forth in Lopez v. Vilches, 734 So.2d 1095 (Fla. 2nd DCA 1999). It is the School Board's position that Fifth DCA's decision in this case is in all respects

correct, but that, in any event, the unrelated works exception is inapplicable under either analysis on application of the facts of this case.

In specific terms, the issue for decision on this Appeal is whether a bus attendant, Taylor, employed by the School Board's Transportation Department, who worked on a bus and operated a wheel chair lift used in the transportation of School Board students, was engaged in unrelated works with regard to a School Board Transportation Department maintenance employee, who worked at the same job location, and whose job was to provide maintenance services on South Area buses and wheelchair lifts.

The Taylor Decision:

The Fifth DCA affirmed the Trial Court's order granting summary judgment which had been entered based on the Trial Court's finding that Taylor and the allegedly negligent co-employee were involved in related works. Specifically, the Fifth DCA held that Taylor and "the alleged negligent mechanics worked out of the same transportation facility and that Taylor, as part of his job, was responsible for the operation of the wheelchair lift while the mechanics, as part of their job, were responsible for the lift's maintenance and repair." Taylor v. School Board of Brevard County, 790 So.2d 1156, 1157-58 (Fla. 5th DCA 2001).

Case Authority:

In determining whether employees are involved in unrelated works, the majority of the Courts addressing this issue have focused on the question of whether the employees were involved in the "same project." There are five factually and legally relevant decisions on this point, all of which are discussed hereafter.

In the case of Dade County School Board v. Laing, 731 So.2d 19 (Fla. 3rd. DCA 1999), a school teacher while leaving a classroom was struck and injured by a golf cart negligently operated by a school custodian. The Third District concluded that the unrelated works exception did not apply. The Court held that the fact that the co-employees had different job duties, teacher and custodian, did not necessarily mean that they were involved in unrelated works. The Court explained that "the pertinent factor is whether the co-employees are involved in different projects. Thus, the focus is upon the nature of the project involved, as opposed to the specific work skills of the individual employees." Id. at 20.

The Court concluded that both employees were working on the same project, in the sense that they were co-employees providing educational services to students at Hialeah High School. Although each individually were assigned different duties and had different work skills, one in the capacity of a teacher, and the other in the capacity of a custodian, "both were involved as part of a team promoting education at the

school campus." Id. at 20. The Court concluded that because "both were engaged in activities primarily related to the provision of education-related services, the unrelated works exception to the School Board's immunity under §440.11(1) does not apply." Id.

The Third DCA in Sanchez v. Dade County School Board, 784 So.2d 1172 (Fla. 3rd DCA 2001), affirmed its holding in Laing. In this decision, a teacher brought suit against the School Board based upon the alleged negligence of its security personnel at the school where she taught when she was assaulted in the school's parking lot during the lunch period. The Third DCA could find no distinction between the facts in Laing, involving a custodian and a teacher at the same school, with the facts in the pending case. Thus, the Third DCA affirmed the trial court's order granting summary judgment on the basis that the unrelated works exception did not apply.

Also applying the "same project" analysis is the decision of Turner v. PCR, Inc.,732 So.2d 342 (Fla. 1st DCA 1998), (reversed on other grounds, 754 So.2d 683 (Fla. 2000). Therein, the First DCA found as fact that the Plaintiff, who worked in a different department and had different job duties than the negligent co-employee, was nonetheless involved in a "team effort" in that he worked with some of the same equipment as the negligent co-employee. Id. at 345. In affirming the Trial Court's

order granting summary judgment the First District held that the Trial Court was correct in concluding that the Plaintiff and the negligent co-employee had "different duties as related to the same project." Id. at 345.

The decision of Vause v. Bay Medical Center, 687 So.2d 258 (Fla. 1st DCA 1996), is also relevant. In that case, a nurse who worked primarily in the medical center's obstetrics department was accidentally killed by the negligence of a co-employee while working on a part-time basis in the employer's hyperbaric center. The Court observed that at the time of the injury to the deceased employee, she was still engaged in an activity related to her primary assignment, the provision of health care to a patient. The fact that the deceased employee was assigned to a different department, or that she was using a specialized piece of equipment at that time, the Court concluded, should not serve to undermine "the broad worker's compensation immunity" provided in §440.11. Id. at 263.

In Abraham v. Dzafic, 666 So.2d 232 (Fla. 2d DCA 1995), the Court found that two co-employees of the same contractor working at the same construction site were not involved in unrelated works. The Second DCA observed that though one employee was a painter and the other employee was a lighting technician, and that their work skills were unrelated, did not mean that their work was unrelated. The Court concluded that both employees were working on the same construction project on

behalf of the same employer, and though "their work skills may have been unrelated, *their work was not.*" Id. at 233.(Emphasis added).

In this case, Taylor and the allegedly negligent maintenance employee were involved in exactly the same project; the transportation by bus of South Area students to Brevard County public schools. Put another way, Transportation Department maintenance employees maintained and serviced the buses that Transportation Department bus drivers and attendants operated.

The Petitioner contends on this review that the Fifth District's opinion in Taylor directly and expressly conflicts with the analysis employed by the Second DCA in Lopez v. Vilches, 734 So.2d 1095 (Fla. 2d DCA 1999). The Petitioner argues that the facts in this case "place it squarely within the Lopez "bright line" test,[5] and that such test is the correct analysis.

In Lopez, a 2 to 1 decision, the Second District concluded that because "the undisputed facts do not preclude the unrelated works exception to worker's compensation immunity, we reverse the summary judgment and remand for further proceedings." Id. at 1096.[6]

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[5] Petitioner's Brief on Jurisdiction, p.3.

[6] Judge, now Justice, Quince, would have affirmed the trial court's award of summary judgment on the basis that the employees were not involved in unrelated works because the employees all had "some duties related to the van in question." Id.

In describing the case, the Second District referred to the facts as "complicated" involving "at least four interrelated business entities...." Lopez, the Plaintiff, worked at a geographically separate funeral home from that where the co-employee defendants worked. Lopez, who performed general funeral home duties, was injured while driving a fleet vehicle maintained by the co-employee defendants, who worked for a separate division of the same employer. Id. at 1097. Lopez allegedly was injured as a result of the co-employees' negligent maintenance of the vehicle he was driving. Id. at 1096.

The majority concluded that the record did not foreclose a finding that the employees were engaged in unrelated works. The Court noted the fact that the co-employees were employed by separate divisions of the same employer.[7] The Court concluded that the application of the unrelated works exception might by proper because "[t]he physical location of their work appears to be separate, and their

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at 1098.

[7] The Court relied on the case of State Dept. Of Corrections v. Koch, 582 So.2d 5 (Fla. 1st DCA 1991). The unrelated works exception was not an issue in that case. Factually, a DOC employee picked up a vehicle from DOT maintenance yard and negligently ran over a DOT employee crossing the street on his way to work. Id. at 6.

specific purpose, general funeral home duties versus vehicle maintenance, appear distinct," Id. at 1097.[8]

The facts in the instant case, in all respects, satisfy the concerns the Second District considered significant in establishing the possible application of the unrelated works exception. In the instant action, Taylor was employed by the same division of the School Board as the allegedly negligent co-employee, the Transportation Department. He also worked at the same job location as the allegedly negligent co-employee, the South Area Transportation Facility. Finally, he was involved in the same function as the allegedly negligent co-employee, the provision of bus transportation to South Area students.

Taylor also relies upon Palm Beach County v. Kelly, 810 So.2d 560 (Fla. 4th DCA 2002), in support of his position that this Court should approve the "bright line" test and reverse the Fifth DCA's decision in this case. The facts in that case involve a motor vehicle accident between two county employees where one was driving home after finishing his shift and the other was driving a County vehicle within the course and scope of his employment. Though both employees reported to work at the same

[8] The majority discussed the legislature's use of the term "works." The Court wrote that the use of the plural of work was "interesting," and cited to the 1973 *American Heritage Dictionary* definition of "works" as "[a] factory, plant, or similar building or system of buildings where a specific type of business or industry is carried on." at p. 1474.

location, they were employed by different divisions of the County, one was a maintenance equipment operator for the airport, while the other was an equipment mechanic for the County's Fleet Management Division. The Trial Court found, as a result, that the employees were involved in "unrelated works." The DCA agreed.

The Fourth DCA noted the existence of two "slightly different approaches" in analyzing the unrelated works exception; one focusing upon whether the employees where engaged in the "same project" as part of the same team, and the other a "bright line" test based upon physical location of the employees where they were primarily assigned, and unity of their business purpose. Id. at 562.

The Fourth DCA, though acknowledging that both employees reported to work at the same location, found that they worked on "entirely different projects." Id. One maintained airport roads and taxiways, while the other maintained heavy equipment at, primarily, a shell rock pit in Boca Raton. Id. Based upon the fact that the jobs of these two employees were entirely unconnected, the Fourth DCA affirmed the trial court's finding that the unrelated works exception applied utilizing either analysis.

Again, the facts in the case on appeal are, in all material respects, dissimilar to the facts in Kelly. Both Taylor, and the allegedly negligent co-employee, had as their basic job function the transportation of South Area students by bus. Further, unlike

Kelly, Taylor and the allegedly negligent co-employee worked for both the same division of the employer with the same goal.

Also worth noting is an earlier decision of the Fourth DCA, School Board of Broward County v. Victorin, 767 So.2d 551 (Fla. 4th DCA 2000). In that case, the Fourth DCA reversed the Trial Court's denial of the School Board's Motion for Summary Judgment where the trial court found that the unrelated works exception applied. The Fourth DCA noted the existence of two different approaches to the application of the unrelated works exception, one based upon the employee's project, the other based upon the physical location and unity of business purpose of the employees. Id. at 553-54.

As to the facts in Victorin, two bus drivers, assigned to different bus depots, where involved in a collision. The Fourth DCA held in that case that the bus drivers were assigned primarily to related works. The Court noted that both bus drivers worked for the same school board and their primary job was to transport school children. Id. at 554. According to the Fourth DCA, regardless of the approach employed, the result was the same, the two employees were not engaged in unrelated works.

Analysis:

Taylor, presents two distinct positions on this appeal. The first, which served as the basis for his claim for discretionary review, is that the Lopez "bright line" analysis is better reasoned than the "same project" analysis employed by the Fifth DCA in the decision on review. The Petitioner argues that as to this case, the record facts, if applied to the analysis in Lopez, would result a finding that the co-employees were engaged in unrelated works. Alternatively, though not acknowledged in his brief, Taylor contends that the Lopez decision, given its substantial reliance on the physical location of the co-employees work site as a factor in the unrelated works analysis, is also incorrect. Taylor, therefore, appears to be contending that neither the "same project" nor "bright line" analysis should be employed in evaluating the application of the unrelated works exception, but instead some other unspecified analysis.

Taylor contends that the decision of the Fifth DCA in this case, as well as the cases it relied upon, were poorly analyzed, were based upon inadequate factual records, and ignored prior legislative history. As discussed hereafter, the instant decision and the majority of reported decisions, evaluated reasonably and appropriately the issue of unrelated works by reviewing the facts to determine whether the co-employees were involved in the same project.

Taylor asserts, at least for a portion of his brief, that the better reasoned analysis of the unrelated works issue is set forth in Lopez v. Vilches, 734 So.2d 1095 (Fla. 2d DCA 1999). This decision employs, as the controlling factors in the analysis, whether the co-employees were primarily assigned to the same work location and whether they had unity of business purpose. There can be no serious contention that Taylor and the allegedly negligent maintenance co-employee did not have unity of business purpose. Both had, as their sole objective, the transportation by bus of South Area School Board students.

Taylor, however, attempts to show, by an incomplete and selective recitation of the facts, that he was not assigned to the same work location as the alleged negligent maintenance co-employee. As discussed above and below, the undisputed facts establish that Taylor and the allegedly negligent maintenance co-employee both worked at the South Area Transportation Depot.

Taylor asserts that the School Board had an "enforced policy forbidding contact between school bus attendants and mechanics in the work place."[9] This statement is patently untrue. The record is clear that there was no School Board policy prohibiting such conduct, though there was an understanding that people without relevant business where not to be allowed in the South Area Transportation

[9] Petitioner's Initial Brief on the Merits, p. 37.

Depot shop area. However, the shop foreman, who had held this position for the proceeding 15 years, acknowledged this understanding, but admitted that he did not enforce same. [R:420-21]. Phil Barnadoe, the assistant shop foreman, testified that though Taylor would not normally have a reason to be in the shop, he was unaware of any policy prohibiting same. [R:292]. Bus mechanic Tracy Woodard, most likely the allegedly negligent co-employee, was "sure" that Taylor had come into the shop, though he had no specific recollection of a particular instance. Likewise, he recalled no instance where the shop policy of authorized personnel only was enforced. [R:121-22]. Chuck Stephenson, the Assistant Director of Transportation, testified that an school bus attendant might, in fact, have business in the shop, for example if he were reporting a complaint or the need for a repair. [R:389-91]. Taylor's representation that here was an "enforced policy forbidding contact" is without support in the record.

Taylor also attempts to support his position that he and South Area bus mechanics did not work at the same location by employing select facts in an effort to show that the supervisors on site, Jessica Shaffer and Wayne Wardwell, lacked the authority to control the conduct of the other's subordinates. The factual record is clear that though each typically supervised only their own subordinates, when the other was off site, each would supervise the subordinates of the other. [R:349-50].

Taylor also contends that his job duties as a school bus attendant where primarily performed on the road in the course of school bus routes, and therefore he should not be considered to work at the South Area Transportation Depot. Thus, he argues that the fact that he began and ended work at the South Area Depot is irrelevant. Taylor, in effect, is asserting that this Court should conclude that his primary work location was the streets and roads of South Brevard County, and therefore not the same primary work location as the alleged negligent School Board mechanic. This argument is inherently illogical.

Taylor's position if accepted, would cause irrational results. For example, if Taylor was run over by the bus on which he was to perform his duties, while it was being driven out of the shop area by a mechanic at the South Area Depot immediately prior to commencing his route, such injury, by his analysis, would be deemed to involve co-employees performing unrelated work. On the other hand, if Taylor, while out on his route, was run over by the Director of Food Services while she was on her way to a meeting with food vendors, Taylor would be deemed to be working at his primary job location. Such results are illogical. An employee must have a primary work location that does not move or change based upon the employee's daily activities.

The factual record in this case clearly establishes that Taylor and the allegedly negligent co-employee worked at the same physical location. Likewise, their business purpose was identical, the transportation of South Area students by bus.

Taylor argues, alternatively, even though he sought review by this Court on the basis of conflict with Lopez v. Vilches, 734 So.2d 1095 (Fla. 2d DCA 1999) and the decision on appeal, the analysis of the unrelated works exception articulated therein is inappropriate. Taylor supports this argument on a proposed version of §440.11(1) which contained subsequently deleted language to the effect that employees "assigned to the same job site" were not involved in unrelated works. CS/SB 636. Thus, the Lopez decision, the case that the Petitioner previously asserted that the instant facts "place [it] squarely within the Lopez bright line test;"[10] erroneously relied upon physical location as a controlling factor.

In support of his alternative position, the Petitioner would have this Court assume that the legislature, by eliminating the "same job site" language contained in an earlier proposed version of §440.11(1),which read in relevant part "but they are not assigned to the same job site or are assigned primarily to unrelated works," implicitly considered job location to be a factor not to be considered in the unrelated works analysis. However, employing the appropriate interpretation of this legislative history

[10] Petitioners' Brief on Jurisdiction, p. 6.

leads to the inescapable conclusion that the legislature eliminated the "same job site" language from §440.11(1) because same was superfluous.

Taylor correctly observes that Courts, when construing statutory language, should apply the plain meaning of the words employed. §440.11(1) states that worker's compensation immunity will not apply "to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within public or private employment...." According to the *American Heritage College Dictionary*, p.1554 (3rd Ed. 1993), "works" is defined as "[a] factory or similar buildings or complex of buildings where a specific type of business or industry is carried on." In light of this definition, there was no need for the legislature to include in the statute language stating that employees assigned to the "same job site' were not involved in unrelated works. The definition of "works" encompassed the concept of "job site." In this case, the indisputable facts show that the South Area Transportation site was a complex of buildings where a specific type of business was carried on, the transportation by bus of south Brevard County public school students.

Alternatively, Taylor wants it both ways. He argues to this Court on the one hand that it should conclude that he did not work at the same job location as the allegedly negligent co-employee. In that event, he argues that the Lopez rationale

should be employed. If, on the other hand, this Court were to find, as did the Fifth DCA, that Taylor and the allegedly negligent co-employee worked at the same job location, Taylor would have this Court consider such finding as irrelevant to the unrelated works analysis, even though same is integral to the Lopez analysis. The work site of the co-employees, regardless of the analysis employed, was a consideration in every reported decision. To consider same is simply logical, to argue otherwise is not.

As to the Courts employing the "same project" analysis, they have, implicitly, applied an informal definition of "works." That definition is "of, relating to, designed for, or engaged in work."[11] Thus, these Courts have concentrated on whether the co-employees were engaged in related work in furtherance of the employer's business. These Courts have all noted the location of the co-employees' work, but have instead focused on whether the co-employees were involved in the same project on the behalf of the common employer. The ultimate question being whether the injured employee was mainly engaged in a project unconnected with that of the co-employee. This is a reasonable interpretation of the statute.

In this case, it is indisputable that both Taylor and the alleged negligent maintenance employee where primarily involved in the provision of bus transportation

[11] American Heritage College Dictionary, p. 1554, (3rd Ed. 1993).

services to South Area School Board students. Their work was closely related, one provided maintenance to the bus used by the Petitioner in the provision of transportation services to students.

Finally, though the School Board believes that the Trial Court's decision granting final summary judgment on the basis of workers compensation immunity was correct, if this Court disagrees, a jury question exists as to whether Taylor and the allegedly negligent maintenance employee were involved in unrelated works.[12]

[12]Further, though Taylor does not address this point, if his injury was the result of negligence on the part of any co-employee, it was that of the bus driver. As discussed above, the bus driver was expected to test the lift before going out on the route and he failed to do so. Taylor's injury would not have occurred had the lift been tested. There can be no dispute that Taylor, and the bus driver who supervised him, were involved in related works. Thus, the responsibility of the bus driver for Taylor's injury is a jury question, providing the Court does not conclude that Taylor and the maintenance employee were likewise involved in related works.

CONCLUSION

The facts in this case establish that Taylor and the allegedly negligent co-employee worked at the same job location, for the same division of the employer, with exactly the same purpose in mind, the provision of bus transportation services to South Area Brevard County school children. On even a more basic level, Taylor operated the wheelchair lift necessary for the transportation of handicapped children that the allegedly negligent employee maintained and repaired. Thus, the School Board asserts that Taylor, who operated lifts, and the allegedly negligent maintenance employee, who maintained and repaired lifts, were involved in the same project.

Moreover, even applying the Lopez "bright line" test, the record shows that Taylor and the allegedly negligent co-employee worked at the same job site and had unity of business purposes, the provision of bus transportation to South Area students.

Accordingly, the School Board respectfully requests that this Court affirm the decision on appeal and award to it the costs associated with this appeal.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **Joseph H. Williams**, 311 West Fairbanks Avenue, Winter Park, FL 32789, and **Kelly B. Gelb**, 700 S.E. Third Avenue, Courthouse Law Plaza, Suite 100, Ft. Lauderdale, FL 33316, this ____ day of June, 2002.

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CERTIFICATE OF TYPE FACE COMPLIANCE

Respondent files this, its certificate that the size and style of type used in this brief is Times New Roman 14-point font.

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