IN THE SUPREME COURT OF FLORIDA

CASE NO. SC04-2349
(Lower Tribunal Case No. 3D03-2482)

JULIO ARAVENA, Husband and Personal Representative of the Estate of GREGORIA VEGA, Deceased,

Petitioner,

vs.

MIAMI-DADE COUNTY

Respondent.

ON PETITION FOR DISCRETIONARY REVIEW FROM A DECISION OF THE THIRD DISTRICT COURT OF APPEAL

RESPONDENT'S ANSWER BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The parties agree on the material facts as described by the Third District Court of Appeal. See Miami-Dade County v. Aravena, 886 So. 2d 303, 304 (Fla. 3d DCA 2004).

Petitioner's wife, Gregoria Vega ("Vega"), was a school crossing guard at the intersection of SW 16 Street and SW 62 Avenue in Miami-Dade County. Id. On October 24, 2001, two vehicles collided at that intersection, where the controlling traffic signal was not operating properly. Id. As a result of the collision, one of the vehicles veered off the road and killed Vega. Id.

After the accident, Petitioner received workers' compensation benefits from Vega's employer, Miami-Dade County (the "County"). He also brought a wrongful death suit against the County, claiming that Vega's death was caused by the County's traffic signal repair personnel, who negligently failed to repair the malfunctioning traffic signal at the intersection. Id.

At trial, the County argued that because Petitioner was entitled to and did receive workers' compensation benefits as a result of the accident, his negligence claim was barred by workers' compensation immunity. Id. Petitioner argued that because Vega and her negligent co-employees were engaged in unrelated works, the County's immunity did not apply. Id. The trial court agreed with Petitioner and entered a judgment in his favor. Id. The County appealed.

On appeal, the Third District relied heavily on this Court's recent decision in Taylor v. School Board of Brevard County, 888 So. 2d 1 (Fla. 2004). In Taylor—which was rendered just weeks before the oral argument in the Third District—this Court explained that the unrelated works exception to workers' compensation immunity should be construed narrowly and "applied only when it can clearly be demonstrated that a fellow employee whose actions caused the injury was engaged in works unrelated to the duties of the injured employee." Id. at 4. Paraphrasing that language, the Third District held that it could not "be clearly demonstrated that the work of the County's traffic signal repair personnel, whose job was to regulate vehicular and pedestrian traffic, was unrelated to the work of the school crossing guard, whose job also was to regulate vehicular and pedestrian traffic at the same intersection." Aravena, 886 So. 2d at 305. Accordingly, the Third District reversed the trial court's decision and remanded with instructions that a judgment be entered for the County. Id.

Petitioner sought review with this Court, contending that the Third District's decision conflicted with this Court's decision in Taylor and the Fourth District's decision in Palm Beach County v. Kelly, 810 So. 2d 560 (Fla. 4th DCA 2002). On March 9, 2005, the Court agreed to review the Third District's decision.

SUMMARY OF THE ARGUMENT

The Petition for Discretionary Review should be dismissed as improvidently granted because the Third District's decision does not "expressly and directly" conflict with either Taylor or Kelly. In Taylor, this Court held that the unrelated works exception "should be applied only when it can clearly be demonstrated that a fellow employee whose actions caused the injury was engaged in works unrelated to the duties of the injured employee." Taylor, 888 So. 2d at 5. Applying this very test, the Third District held that the unrelated works exception did not apply in this case because it could not "be clearly demonstrated that the work of the County's traffic signal repair personnel, whose job was to regulate vehicular and pedestrian traffic, was unrelated to the work of the school crossing guard, whose job also was to regulate vehicular and pedestrian traffic at the same intersection." Aravena, 886 So. 2d at 305. As its holding demonstrates, the Third District was true to Taylor. Kelly, the other case relied on by Petitioner to establish jurisdiction, is entirely distinguishable on its facts. Because the Third District's decision does not "expressly and directly" conflict with either Taylor or Kelly, the Petition should be dismissed for lack of jurisdiction.

Even if the Court were to decide that there is a sufficient basis to exercise its conflict jurisdiction, it should approve the decision below because the Third

District, closely following Taylor, correctly held that the unrelated works exception did not apply in this case.

In Taylor, this Court rejected an argument identical to the one advanced by Petitioner: that the term "works" has a "plain meaning" of a physical location or job site. Moreover, the Court rejected the argument, again advanced by Petitioner, that the legislative intent of the unrelated works exception requires that it be interpreted broadly to apply whenever the employees in question worked at different locations. Instead, the Court held that, because it constitutes an exception to an otherwise broad grant of immunity, the unrelated works exception should be narrowly construed. The Court specifically refused to adopt a bright-line test, noting that it "could not hope to contemplate the myriad of factual circumstances that may give rise to the issue." Taylor, 888 So. 2d at 5. Nothing in Petitioner's Initial Brief suggests the Court got it wrong just a few months ago when it decided Taylor.

Finally, the Court should instruct lower courts dealing with this issue to examine, just as this Court did in Taylor and the Third District did below, the totality of the circumstances, including the physical business location of the relevant employees, whether the employees shared the same project, and whether the employees shared the same business purpose, to determine whether the employees' respective job functions were so unrelated that it could not have been

reasonably foreseeable that the injured employee could be harmed by the co-worker in question. Such an examination in this case demonstrates that Vega, the crossing guard at a busy intersection, and her co-workers, who were responsible for repairing the malfunctioning traffic signal at that same intersection, were engaged in related works. Accordingly, the County's workers' compensation immunity applies, and the Third District correctly held that Petitioner's claim was barred as a matter of law.

STANDARD OF REVIEW

This Court reviews de novo the trial court's application of the unrelated works exception to the Workers' Compensation Law. See BellSouth Telecomms., Inc. v. Meeks, 863 So. 2d 287, 289 (Fla. 2003) ("Statutory interpretation is a question of law subject to de novo review.").

ARGUMENT

I. THE PETITION SHOULD BE DISMISSED AS IMPROVIDENTLY GRANTED

"The jurisdiction of this Court extends only to the narrow class of cases enumerated in Article V, Section 3(b) of the Florida Constitution." Gandy v. State, 846 So. 2d 1141, 1143 (Fla. 2003). The Court may exercise its "conflict jurisdiction" only when the decision under review "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Art. V, § 3(b)(3), Fla. Const.; accord Fla. R. App. P.

9.030(a)(2)(A)(iv). The conflict must be "express," meaning it must appear "within the four corners of the decision" under review. Hill v. Hill, 778 So. 2d 967 (Fla. 2001). Absent a conflict, this Court may not review the district court's decision. The Fla. Star v. B.J.F., 530 So. 2d 286, 288-89 (Fla. 1988).

The decision below does not conflict with Taylor or any other case. In Taylor, a school bus attendant was injured when a wheelchair lift affixed to a bus fell on him. Taylor, 888 So. 2d at 2. He sued the school board based on the actions of a school board mechanic, who had negligently inspected the lift two days before the accident. Id. The school board asserted its workers' compensation immunity, and the plaintiff responded that such immunity did not apply because the plaintiff, a bus attendant, and his negligent co-employee, a bus mechanic, were assigned primarily to unrelated works. Id.

Recognizing that the unrelated works exception is a departure from an otherwise broad grant of immunity, this Court held that the exception must be narrowly construed. Id. at 5. Specifically, the Court held that the unrelated works exception "should be applied only when it can clearly be demonstrated that a fellow employee whose actions caused the injury was engaged in works unrelated to the duties of the injured employee." Id.

Applying that rule to the facts before it, the Court focused on the employees' respective job duties and held that the bus repair personnel and the bus attendant

"shared a common goal of providing safe transportation to the students." Id. at 6. Specifically, the Court stated:

> [B]ecause we agree with the trial court's reasoning that Taylor and the school board mechanics had in common the "provision of transportation services to Brevard County school children," we cannot say that the work of the employees who maintained the school bus was unrelated to the work of the injured employee who was responsible for the safety of the students using the bus.

Id. at 5-6.

In rejecting Petitioner's assertion of the unrelated works exception in this case, the Third District relied heavily on Taylor. Indeed, the court paraphrased Taylor, holding that the unrelated works exception did not apply because it could not "be clearly demonstrated that the work of the County's traffic signal repair personnel, whose job was to regulate vehicular and pedestrian traffic, was unrelated to the work of the school crossing guard, whose job also was to regulate vehicular and pedestrian traffic at the same intersection." Aravena, 886 So. 2d at 305.

The Third District not only used the Taylor Court's language, but it also adhered to the Taylor Court's logic. The traffic signal repair personnel and the crossing guard in this case, like the bus repair personnel and the bus attendant in Taylor, "shared a common goal." Taylor, 888 So. 2d at 6. In Taylor, the common goal was "providing safe transportation to the students." Id. Here, the common goal was "regulat[ing] vehicular and pedestrian traffic." Aravena, 886 So. 2d at

305. Because it could not be "clearly demonstrated" in either case that the employees were engaged in "unrelated works," the plaintiffs' negligence claims were barred by workers' compensation immunity. The decision below meticulously followed and is entirely consistent with this Court's decision in Taylor. There is no conflict.

Nor does the Third District's decision conflict with Kelly, which is entirely distinguishable on its facts. In Kelly, one county employee (Kelly) was driving home from work when his car was struck by a truck being driven by another county employee (John). Kelly, 810 So. 2d at 561. Kelly was a maintenance equipment operator at the Palm Beach International Airport and was responsible for maintaining the airport's roadways, taxiways, and grassy areas. Id. John was an equipment mechanic for the county's Fleet Management Division. Id. His job was to pick up his county truck from a shop on the airport grounds and to drive it to the county's shell rock pit in Boca Raton, where he maintained and repaired the excavation equipment used to dig shell rock. Id.

Other than their common employer, Kelly and John had nothing to do with one another. "Although they both began and ended their day at County offices in the same general location, they worked on different projects at different locations." Id. at 562. Most significantly, as the Fourth District held, the work performed by Kelly and John "furthered different business purposes of the County." Id.

Accordingly, the Fourth District properly held that Kelly and John were assigned to unrelated works, such that workers' compensation immunity did not apply.

In contrast to the employees in Kelly, the employees in this case, as the Third District readily recognized, worked on related projects. Vega, as a crossing guard, directed drivers and pedestrians to help them navigate a busy and dangerous intersection. The County's traffic signal repair personnel maintained the traffic signal that was essential for regulating traffic at that same intersection. In other words, both Vega and the traffic signal repair personnel furthered the County's goal of regulating traffic and pedestrians at the intersection where the accident occurred. This distinguishes this case from Kelly, where the employees involved in the accident worked on entirely unrelated matters.

There being no "express and direct" conflict between the Third District's decision and the decision of any other court, there is simply no basis for this Court to exercise its limited conflict jurisdiction. The Petition should be dismissed.

II. THE THIRD DISTRICT CORRECTLY HELD THAT THE UNRELATED WORKS EXCEPTION IS INAPPLICABLE HERE

Even if the Court were to conclude that there is a proper basis to exercise its conflict jurisdiction, it should affirm the Third District's decision to enforce the County's workers' compensation immunity. The Third District's decision below strictly adhered to the Court's recent decision in Taylor, which was correctly decided and which is still the only pronouncement from this Court regarding the

proper scope of the unrelated works exception to workers' compensation immunity.[1]

In Taylor, this Court acknowledged that the basic purpose of the Workers' Compensation Law is twofold: (1) to ensure that workers receive adequate and certain payment for workplace accidents; and (2) to replace an unwieldy tort system that made it virtually impossible for businesses to predict or insure for the cost of industrial accidents. Taylor, 888 So. 2d at 3; De Ayala v. Fla. Farm Bureau Cas. Ins., 543 So. 2d 204, 206 (Fla. 1989). The Workers' Compensation Law "was meant to systematically resolve nearly every workplace injury case on behalf of both the employee and the employer." Taylor, 888 So. 2d at 6.

Applying the well-recognized rule of statutory construction that exceptions should be narrowly and strictly construed, the Court held that the unrelated works exception "represents an exception to the broad exclusive remedy provisions of the Florida Workers' Compensation Law" and should therefore be applied sparingly. Id. at 5. Accordingly, the Court held that the unrelated works exception "should be

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[1] Moreover, the doctrine of stare decisis strongly counsels against using this case as a vehicle to revisit the issues in Taylor. Although stare decisis must give way when there has been a significant change of circumstances since the adoption of a legal rule, or where the rule has proved unworkable, neither of those situations exists here. Petitioner does not contend that Taylor has proved to be unworkable in the lower courts or that the lower courts have been inconsistent in their application of Taylor. Rather, Petitioner's real problem with Taylor is its holding. This, of course, is not a proper basis to depart from stare decisis and to revisit a decision rendered just a few months ago.

applied only when it can clearly be demonstrated that a fellow employee whose actions caused the injury was engaged in works unrelated to the duties of the injured employee." Id.

To prevail here, Petitioner is forced to argue and does argue that Taylor was wrongly decided. Petitioner does so in two ways. First, Petitioner argues that in Taylor, this Court ignored the plain meaning of the phrase "assigned primarily to unrelated works." Relying exclusively on a definition from Black's Law Dictionary, Petitioner argues that "works" refers to a physical location, such as a particular building or factory. Pet. Br. at 20. Thus, according to Petitioner, "when the place of assignment of two employees is at different buildings or structures that are primarily unrelated to each other, the two are 'assigned primarily to unrelated works,'" and immunity should not apply. Id. at 20-21.

Petitioner's illogically narrow definition of "works" was rejected by this Court in Taylor, as evidenced by the Court's resorting to principles of statutory construction to interpret the unrelated works exception. Taylor, 888 So. 2d at 5. Indeed, the petitioners in Taylor, also relying on the definition in Black's Law Dictionary, made the exact argument Petitioner makes here, which the Court apparently found so uncompelling that it did not even discuss it.[2]

[2] The argument referenced above can be found on page 17 of Petitioners' Initial Brief on the Merits in Taylor, which is available on the Court's Website at http://www.floridasupremecourt.org/clerk/briefs/2001/1801-2000/01-1924_ini.pdf.

The Taylor Court was correct to reject the Black's Law Dictionary definition of "works." Petitioner never explains why a legal dictionary should provide a controlling definition for a non-legal word used in the context of the workers' compensation scheme. Indeed, Justice Lewis's concurring opinion in Taylor, relied upon so heavily by Petitioner here, recognized that consulting a dictionary would not reveal a "plain meaning" for "works." Id. at 9 n.2 (Lewis, J., concurring). As Justice Lewis observed, "[a] simple cursory glance at the words 'work' or 'works' in the dictionary reveals over thirty-five different and divergent definitions for the term." Id. (Lewis, J., concurring) (citing Merriam-Webster's Collegiate Dictionary 1363 (10th ed. 1998)). Moreover, if the Legislature intended to equate "works" with location, it could have used a number of terms more commonly associated with that meaning. Id. at 9 (Lewis, J., concurring).[3]

Conceding that the meaning of "works" might not be as "plain" as he suggests, Petitioner advances a second argument: that notwithstanding its failure to expressly state it, the Legislature intended for the unrelated works exception to

[3] If any word in the phrase "unrelated works" has a plain meaning, it is the word "unrelated." "Un" means "not" and "related" means "being connected; associated." The Am. Heritage Coll. Dictionary 1152 (3d ed. 1993). Certainly, there is at least some connection or association between a crossing guard and the persons responsible for repairing the malfunctioning traffic signal above her. Accordingly, if the Court were inclined to follow the "plain meaning" of the statute, it would be required to approve the Third District's decision.

apply whenever the employees in question work from different locations and have no contact with each other. Pet. Br. at 30-31.

Petitioner attempts to support this alleged legislative intent by examining the two legislatively-created exceptions to co-employee immunity: (1) when an injury was caused by co-employees acting with "willful and wanton disregard or unprovoked physical aggression or with gross negligence;" and (2) when the employees involved in the accident were "primarily assigned to unrelated works." § 440.11(1)(b), Fla. Stat. (2001). What these exceptions have in common, according to Petitioner, is that neither contributes to disharmony in the workplace. If an employee has acted towards another with "unprovoked physical aggression," for example, there would already be disharmony between the employees regardless of whether a lawsuit was filed by one against the other. Pet. Br. at 27. Similarly, if two employees are "assigned primarily to unrelated works," such that there is no contact between them, the filing of a lawsuit by one against the other would not result in disharmony in the workplace. Id. at 28.

Thus, Petitioner argues that his interpretation of the unrelated works exception must be correct because it is consistent with the Legislature's goal of avoiding "disharmony in the work-place," id. at 27, which he claims was the

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Not surprisingly, throughout his brief, Petitioner examines the meanings of "primarily," Pet. Br. at 30; "assigned," id.; and "works," id. at 20-21; but never discusses what "unrelated" might mean.

motivation behind the 1978 amendment to the Workers' Compensation Law extending immunity to co-employees. Id. at 27-28.[4]

Petitioner's argument fails because it is premised on a faulty assumption—that the purpose of the 1978 amendment was to create harmony in the workplace. There is simply no authority for Petitioner's assumption about the legislative intent behind the 1978 amendment and, tellingly, Petitioner cites to none.

In fact, this Court, not more than a few months ago, expressly held that the intent behind the unrelated works exception could not be discerned. Taylor, 888 So. 2d at 5 ("[W]e are limited by our lack of precise knowledge of the legislative intent behind the exception."). Justice Lewis, in his concurring opinion, affirmed that "a review of the legislative history simply provides no insight into the Legislature's intended meaning for the exception." Id. at 8 (Lewis, J., concurring); see also Vause v. Bay Med. Ctr., 687 So. 2d 258, 267 (Fla. 1st DCA 1996) ("Precisely what it was that impelled the legislature to add the primary work assignment exception to workers' compensation immunity is not readily apparent,

[4] Like Petitioner's argument regarding the plain meaning of "works," his argument regarding "harmony in the workplace" was also advanced by the petitioners in Taylor. At the oral argument in that case, counsel for the petitioners argued that workers' compensation immunity was extended to co-employees to prevent the "strife" that is created when one employee sues another. See http://www.wfsu.org/gavel2gavel/transcript/01-1924.htm. The Court's opinion in Taylor contains no indication that it agreed with this unsupported assertion.

as this exception is unique to Florida's workers' compensation scheme.") (Miner, J., concurring in part and dissenting in part).[5]

Indeed, given that the 1978 amendment constituted a significant expansion of workers' compensation immunity, a better explanation for the exceptions is that, although the Legislature was expanding an already broad grant of immunity, it did not wish to extend it so far as to cover situations where employees were injured in completely unforeseeable ways.

For example, it is foreseeable that employees will be injured by negligent co-workers, but it is not foreseeable that they will be injured because their co-workers act with gross negligence or malice. Thus, the legislature carved an exception to immunity for malicious employees. Similarly, it is foreseeable that employees will be injured by fellow employees performing related work, but it is not foreseeable that employees will be injured at the workplace by fellow

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[5] Further evidence that the Legislature was not concerned with preventing disharmony in the workplace, and thus did not intend for the employees' location to be the determinative factor, comes from an earlier version of what eventually became the unrelated works exception. That bill provided that "employees of the same employer may have a cause of action if each is operating in the furtherance of the employer's business but they are not assigned to the same job site or are assigned primarily to unrelated works within private or public employment." C.S./S.B. 636, 1978 Leg. Sess. (Fla. 1978) (emphasis added). The Legislature's ultimate omission of the "same job site" language from the final version of the law is strong evidence that the Legislature did not intend for application of the exception to turn on whether the employees work at "the same job site." See Mayo v. Amer. Agric. Chem. Co., 133 So. 885, 887 (Fla. 1931); State Dep't of Ins. v. Ins. Servs. Office, 434 So. 2d 908, 911 (Fla. 1st DCA 1983).

employees assigned to completely unrelated tasks. Thus, the legislature created an exception for employees engaged primarily in unrelated works. Therefore, an appropriate standard would be one that aimed to determine whether the employees' respective job functions are so unrelated that it could not have been reasonably foreseeable that the injured employee could be harmed by the co-worker in question.

This is precisely what the Court did in Taylor. It required courts to determine whether it can "clearly be demonstrated" that the employee causing the injury was engaged in works unrelated to that of the injured employee. Taylor, 888 So. 2d 1 at 5. By doing so, courts will necessarily exempt from workers' compensation immunity only those workplace injuries that could not have been reasonably foreseen.

To determine whether the existence of unrelated works has been "clearly demonstrated," id., courts can and should examine the totality of the circumstances. Those include the physical business location of the relevant employees, whether the employees shared the same project, and whether the employees shared the same business purpose. See id. at 14 (Lewis, J., concurring). Any one of those circumstances alone, or in conjunction, depending on which of the "myriad of factual circumstances" might have given rise to the issue, id. at 5,

could be sufficient to show a relation between the works of the employees at issue. When such a relation is shown, the exception cannot apply.

For example, in Taylor it could not clearly be demonstrated that the works at issue were unrelated because both the school bus attendant and the school bus mechanic had jobs that dealt with providing transportation services to students. Id. at 4. Similarly, in Lopez v. Vilches (the decision from the Second District which this Court disapproved in Taylor), it could not clearly be demonstrated that the works at issue were unrelated because the driver of a funeral home van and the mechanics who maintained it all had job duties related directly to the operation of the van. Lopez v. Vilches, 734 So. 2d 1095, 1098 (Fla. 2d DCA 1999) (Quince, J., dissenting).

The same analysis and result are true here, where it could not clearly be demonstrated that the works at issue were unrelated because Vega, the school crossing guard, and her co-employees, the traffic signal repair personnel, were all involved in regulating vehicular and pedestrian traffic at the intersection of SW 16 Street and SW 62 Avenue in Miami-Dade County. Aravena, 886 So. 2d at 305.

Kelly provides an instructive contrast. There, the plaintiff maintained the roads and taxi-ways at the Palm Beach International Airport, while the employee who injured him performed repair work on the County's heavy equipment (such as excavation equipment) at the shell rock pit in Boca Raton. Kelly, 810 So. 2d at

562. As the Fourth District noted, these two employees "worked on different projects at different locations and furthered different business purposes of the County." Id. It was simply unforeseeable that one would negligently injure the other. Accordingly, the court correctly held that the unrelated works exception did apply.

The outcomes in these cases—Taylor, Justice Quince's subsequently approved dissent in Lopez, Aravena, and Kelly—are consistent. They followed a perspective affirmed by the Court in Taylor, which properly required that the unrelated works exception be construed as any other statutory exception would be construed, narrowly so as not to frustrate the overall purpose of the statute. That perspective then required an examination of the facts at issue, in their totality, to determine whether any relation existed between the work of the relevant employees.

While this process demands a fact-intensive examination in each case, as many legal tests do, it is a process that will prove entirely workable if given a chance. Because Taylor properly guided the Third District's decision here, that decision, and the holding of Taylor itself, should be affirmed.

CONCLUSION

Because the Third District's decision below does not expressly and directly conflict with any decision of this Court or any district court, the Petition for

Discretionary Review must be dismissed. Alternatively, because the Third District correctly held that the unrelated works exception is inapplicable here, this Court should approve the 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 U.S. mail on April 29, 2005 on Martin Leach, Feiler, Leach & McCarron, P.L., 901 Ponce de Leon Blvd., Penthouse Suite, Coral Gables, Florida 33134; and Margaret E. Sojourner, Langston, Hess, Bolton, Znosko & Shepard, 111 South Maitland Avenue, Maitland, Florida 32751.

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CERTIFICATE OF COMPLIANCE

Undersigned counsel certifies that this brief has been generated in Times New Roman 14-point font and complies with the font requirements of Rule 9.210(a) of the Florida Rules of Appellate Procedure.

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Assistant County Attorney