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.

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

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# JURISDICTIONAL BRIEF OF RESPONDENT

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## STATEMENT OF THE CASE AND OF THE FACTS

The parties essentially agree on the 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 lights were not operating properly. Id. As a result of the collision, one of the vehicles veered off the road and killed Vega. Id.

Petitioner subsequently brought a wrongful death suit against Miami-Dade County (the "County"), claiming that Vega's death was caused, in part, by the negligence of the County's traffic signal repair personnel, who allegedly 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. The trial court rejected the County's argument and entered a judgment for Petitioner. The County appealed.

While the County's appeal was pending, this Court issued its opinion in Taylor v. School Board of Brevard County, No. SC01-1924, 2004 WL 1846219 (Fla. Aug. 19, 2004). In Taylor, the 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 *3. Based in part on this Court's decision in Taylor, the Third District reversed and directed that a judgment be entered for the County. Specifically, 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 was also to regulate vehicular and pedestrian traffic at the same intersection." Aravena, 886 So. 2d at 305.

Petitioner contends that the Third District's decision below conflicts with the Fourth District's decision in Palm Beach County v. Kelly, 810 So. 2d 560 (4th DCA 2002), and this Court's decision in Taylor.

## SUMMARY OF THE ARGUMENT

Petitioner has failed to demonstrate that the decision below directly and expressly conflicts with Kelly, Taylor, or any other decision of any court. Indeed, the Third District's decision—a straightforward application of workers' compensation immunity—is easily distinguishable from Kelly and entirely consistent with this Court's recent holding in Taylor that the unrelated works exception should be narrowly construed. Accordingly, this Court lacks jurisdiction and must deny the Petition.

## STANDARD OF REVIEW

The Florida Constitution permits the Supreme Court to exercise its discretionary "conflict jurisdiction" only when a lower court's decision "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Fla. Const. art. V, § 3(b)(3); accord Fla. R. App. P. 9.030(a)(2)(A)(iv). Accordingly, the Court has consistently refused to sit as a second court of appeal, selectively reversing decisions of the district courts with which it disagrees. See Mystan Marine, Inc. v. Harrington, 339 So. 2d 200, 201 (Fla. 1976) ("Time and again we have noted the limitations on our review and we have refused to become a court of select errors."). Rather, the Court has repeatedly recognized that its jurisdiction is constitutionally limited to a "concern with decisions as precedents as opposed to adjudications of the rights of particular litigants." Ansin v. Thurston, 101 So. 2d 808, 811 (Fla. 1958); see also Robertson v. State, 829 So. 2d 901, 914 (Fla. 2002) (Wells, J., dissenting) ("I believe it to be exceedingly important to the administration of justice in our state that this Court respect that it is a court of limited jurisdiction under Florida's Constitution."). Thus, before this Court will "set aside the decision of a Court of Appeal on the conflict theory [it] must find in that decision a real, live and vital conflict." Nielsen v. City of Sarasota, 117 So. 2d 731, 734-35 (Fla. 1960).

## ARGUMENT

The decision below conflicts with neither the Fourth District's decision in Kelly nor this Court's decision in Taylor.

Kelly is entirely distinguishable on its facts. There, one county employee (Kelly) was driving home from work when he was struck by another county employee (John) driving a truck. 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 almost 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.

In contrast, the employees in this case, as the Third District easily recognized, worked on related projects. Vega, as a crossing guard, directed drivers

and pedestrians to help them navigate a busy and dangerous intersection. Likewise, the County's traffic signal repair personnel were responsible for maintaining a traffic signal that was essential for regulating traffic at the same intersection. In other words, both Vega and the traffic signal repair personnel furthered the County's goal of regulating traffic and pedestrians on County roads.

Indeed, the relationship between Vega and the County's traffic signal repair personnel is strikingly similar to the relationship between the employees in Taylor. There, a school bus attendant was injured when a wheelchair lift affixed to a bus fell on him. Taylor, 2004 WL 1846219, at *1. 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.

This Court held that the bus repair personnel and the bus attendant "shared a common goal of providing safe transportation to the students." Id. at *4. 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.

The traffic signal repair personnel and the crossing guard in this case, like the bus repair personnel and the bus attendant in Taylor, "share a common goal."

Id. In Taylor, the common goal was "providing safe transportation to the students." Id. In this case, the common goal was "regulat[ing] vehicular and pedestrian traffic." Aravena, 886 So. 2d at 305. In neither case could it be "clearly demonstrated" that the employees were engaged in "unrelated works," and so the plaintiffs' negligence claims were barred by workers' compensation immunity. In short, the decision below is entirely consistent with this Court's decision in Taylor.

## CONCLUSION

Because Petitioner has failed to demonstrate that the Third District's decision below directly and expressly conflicts with Kelly or Taylor, this Court lacks jurisdiction and must deny the Petition.

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 January 6, 2005 on Martin Leach, Feiler, Leach & McCarron, P.L., 901 Ponce de Leon Blvd., Penthouse Suite, Coral Gables, Florida 33134.

_____
Assistant County Attorney

## 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