

IN THE SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

JEFFREY WOODARD and
CAROL GLOAD,

CASE NO.: SC05-1986
4TH DCA CASE NO.: 4D04-3531

Petitioners,

v.

JUPITER CHRISTIAN
SCHOOL, INC. and TODD
BELLHORN,

Respondents.

_____ /

ON APPEAL FROM THE FOURTH DISTRICT COURT OF APPEAL

PETITIONERS' INITIAL BRIEF ON THE MERITS

Michelle Hankey, Esquire
William W. Booth, Esquire
Legal Aid Society of Palm
Beach County, Inc.
Juvenile Advocacy Project
423 Fern Street, Suite 200
West Palm Beach, FL 33401
Phone: (561) 655-8944
Fax: (561) 655-5269

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PRELIMINARY STATEMENT

Petitioners cite to the Record on Appeal. All cites to the pleadings, orders, and other documents referenced in the Index to Record on Appeal filed with the Fourth District Court of Appeal are made by using the letter "R" followed by the cited page number(s).

STATEMENT OF FACTS

Respondent Jupiter Christian School (hereinafter JCS) is a private high school teaching its students a Bible centered, Christian based education. [R103]. JCS' mission is to "teach[] the mind and reach[] the heart of each student for Jesus Christ." [R103]. JCS' Statement of Faith guides its mission. This Statement includes the beliefs that a "lost and sinful man" gains salvation only through regeneration by the Holy Spirit and that "the Holy Spirit serves to glorify Christ by saving souls and indwelling believers at the moment of regeneration." [R131-32].

Further, JCS' philosophy "is based on a God-centered view that all truth is God's truth, and that the Bible is the inspired and the only infallible authoritative Word of God... ." [R127]. This philosophy is reflected in its academic policy of "promot[ing] Christ-centered values and attitudes throughout the academic program" and is implemented by providing "opportunities for the student to confess Christ as Savior and Lord [and] [t]o teach the student the Biblical view of dating, marriage and the family." [R127, R145]. Thus, JCS offers "personal counseling...from a Biblical point of view" and has "persons on staff trained and experienced in helping people in personal matters." [R151, R152]. The school refers students with

disciplinary issues, such as sexual immorality, to counseling to assist the students in building Christian character. [R155, R159, R160]. Students are also required to attend weekly chapel service "to aid student growth as a Christian, and to provide them with the opportunity to worship and praise God together with fellow students and teachers." [R163].

Since the ninth grade, Petitioner Jeffrey Woodard (hereinafter Woodard) attended JCS. [R103]. He was a devout Christian and fully shared JCS' Statement of Faith. [R103]. At the beginning of Woodard's senior year, JCS administrators directed Respondent Todd Bellhorn (hereinafter Bellhorn) to meet with Woodard, ask him about his sexual orientation, and counsel him on the issue. [R103, R114]. Bellhorn was a JCS chaplain and Bible teacher. [R102]. His stated objective as chaplain was to "minister to high school teenagers" and "to not only be a teacher to them, but also one whom they can trust and approach without fear or intimidation." [R114]. Woodard believed that Bellhorn was a member of the clergy. [R115].

On August 15, 2003, Bellhorn removed Woodard from class and took him to a private area where Bellhorn asked Woodard about his sexual orientation. [R114-15]. Before answering, Woodard asked Bellhorn if the conversation would remain confidential to which Bellhorn replied it would. [R115]. Believing their

conversation would be kept confidential, Woodard disclosed to Bellhorn that he was homosexual. [R115]. Woodard did so for the purpose of seeking spiritual counsel and salvation. [R116]. Bellhorn spoke at length with Woodard about various Biblical views of homosexuality and noted that Woodard appeared relieved to have told someone his secret. [R115].

Afterwards, Bellhorn reported Woodard's confession to JCS administrators despite his promise of confidentiality. [R116]. Knowing of Bellhorn's abuse of Woodard's trust, JCS administrators nevertheless revealed Woodard's confession to others. [R116]. JCS also expelled him. [R116]. Moreover, Woodard was ridiculed publicly and shunned by his schoolmates. [R116]. This breach of trust caused Woodard emotional distress. [R116-17].

Woodard and his mother, Carol Gload, sued JCS and Bellhorn for negligent infliction of emotional distress based upon the breach of the fiduciary duty of confidentiality. [R114-17]. They alleged that Bellhorn's relationship of trust and confidence with Woodard created a fiduciary duty in both Bellhorn and JCS to keep all communications with Woodard confidential especially in light of Woodard's desire to achieve salvation by confessing his secret and Bellhorn's spiritual

superiority or worthiness associated with his status as chaplain. [R114-17].

JCS and Bellhorn moved to dismiss contending that the impact rule prohibited the cause of action. [R181-97]. The trial court agreed and dismissed with prejudice. [R219-22]. Woodard and Gload then appealed. [R296].

The Fourth District Court of Appeal affirmed "declin[ing] to ignore the impact rule" because this Court had "not yet recognized an exception to the impact rule for disclosure of information by a member of the clergy." Woodard v. Jupiter Christian School, Inc., 2005 Fla. App. LEXIS 16261 *8 (Fla. 4th DCA 2005). The court certified the following question:

Does the impact rule preclude a claim for negligent infliction of emotional distress arising out of the breach of confidential information provided to a clergyman?

Id.

STANDARD OF REVIEW

As this appeal concerns a question of law, the standard of review for this Court is de novo. Siegle v. Progressive Consumers Ins. Co., 819 So.2d 732, 734 (Fla. 2002); Southern Baptist Hosp. of Fla., Inc. v. Welker, 908 So. 2d 317, 319 (Fla. 2005).

SUMMARY OF THE ARGUMENT

The Fourth District Court of Appeal's affirmance of the use of the impact rule to foreclose Woodard's cause of action for emotional distress results in its blind application without first considering whether the type of action pled necessitates the rule's protections. Examining the cause of action in this case shows that it is the same type of action this Court has previously declared untouchable by the impact rule. Thus, the impact rule is irrelevant in this case.

The impact rule's purpose of assuring "a tangible validity of claims for emotional or psychological harm" is not triggered when the injuries suffered, as in this case, could only be emotional or psychological in nature. Rowell v. Holt, 850 So. 2d 474, 478-79 (Fla. 2003); Gracey v. Eaker, 837 So. 2d 348, 356 (Fla. 2002); Tanner v. Hartog, 696 So. 2d 705, 708 (Fla. 1997); Kush v. Lloyd, 616 So. 2d 415, 422 (Fla. 1992). The facts giving rise to Woodard's cause of action echo those in Gracey where this Court allowed recovery for emotional injury from one who promised to protect confidences gained in a fiduciary relationship, yet later betrayed that promise. 837 So. 2d at 357.

The relationship nurtured by JSC and Bellhorn with Woodard constituted a fiduciary relationship with expectations by

Woodard that private communications would remain private. JSC's and Bellhorn's disclosure of Woodard's private confession to others thus amounted to a breach of the fiduciary duty of confidentiality. This breach resulted in Woodard being publicly ridiculed and expelled from school. [R116]. The resulting emotional damages were foreseeable and flowed from the breach especially due to the conflict that Woodard needed to reconcile between his religious convictions and his sexual orientation.

As in the psychotherapist/patient relationship, an expectation of privacy flows from the clergyman/lay individual fiduciary relationship. The disclosure of one's inner thoughts and intimate details of life is sacred and expected to remain confidential. Thus, the sanctity of the clergyman/lay individual relationship and the promotion of emotional well-being flowing from the relationship should be given equivalent import as that given to the psychotherapist/patient relationship.

If the application of the impact rule is upheld thereby foreclosing Woodard's cause of action, the practice of spiritual counseling will likely become a nullity as one's confessions would be open to public scrutiny. Therefore, this Court should find the impact rule is not triggered when a lay individual seeks recovery for emotional distress after an unauthorized

disclosure of a private confession, thus answering the certified question in the negative.

ARGUMENT

THIS COURT SHOULD ANSWER THE CERTIFIED QUESTION IN THE NEGATIVE AS THE BREACH OF FIDUCIARY DUTY ACTION PLED DOES NOT IMPLICATE THE POLICY JUSTIFICATIONS OF THE IMPACT RULE.

Recently, this Court held

the issue of whether the impact rule applies is inextricably intertwined with the type of cause of action that is asserted... . [T]he impact rule does not apply to all recognized causes of action. Specifically, the impact rule is inapplicable to recognized intentional torts that result in predominantly emotional damages such as intentional infliction of emotional distress, defamation, or invasion of privacy claims.

Southern Baptist Hosp. of Fla., Inc. v. Welker, 908 So. 2d 317, 320 (Fla. 2005). The impact rule has also been found inapplicable to actions seeking emotional distress damages based upon a breach of fiduciary duty. Gracey v. Eaker, 837 So. 2d 348, 357 (Fla. 2002); Rowell, 850 So. 2d at 479-80. Thus, "[t]he impact rule is not...an inflexible, unyielding rule of law, so sacred that it must be blindly followed without regard to context." Rowell, 850 So. 2d at 478.

In Gracey, a husband and wife received marital counseling from a psychotherapist. 837 So. 2d at 351. The psychotherapist "in the role of confidant and counselor, and under a veneer of

trust and confidence encouraged each [spouse] to reveal without hesitation the most private of thoughts, emotions, fears, and hopes." Id. at 352. The psychotherapist then revealed to each spouse confidences gained from the other. Id. at 351. The Gracey's sued for emotional distress resulting from the breach of the fiduciary duty of confidentiality. Id. at 350, 351. The Fifth District Court of Appeal affirmed the trial court's application of the impact rule. Id. at 351.

On review, this Court considered the question of "whether Florida's impact rule is applicable in a case in which it is alleged that the infliction of emotional injuries has resulted from a psychotherapist's breach of a duty of confidentiality to his patient, when the psychotherapist has created a statutory confidential relationship." Id. at 350-51. Examining the connection between a cause of action for breach of fiduciary duty and the damages sought, this Court explained that "a cause of action for breach of fiduciary duty [is recognized] in different contexts when a fiduciary has allegedly disclosed confidential information to a third party." Id. at 353, 356.

If a relation of trust and confidence exists between the parties (that is to say, where confidence is reposed by one party and a trust accepted by the other, or where confidence has been acquired and abused), that is sufficient as a predicate for relief. The origin of the confidence is immaterial.

Id. at 352. This Court concluded that "the source of [the therapist's] duty to the [Gracey's] is easily identified due to the 'very special psychotherapist/patient confidential relationship'" between them. Id. at 353. Part and parcel of a fiduciary relationship is the "duty not to disclose the confidences reposed" in the one owing the duty. Id. at 354. This Court concluded that "a psychotherapist who has created a fiduciary relationship with his client owes that client a duty of confidentiality, and [the] breach of such duty is actionable in tort." Id.

This Court acknowledged that it is "undeniable" that "the public policy of this state guards emotional survival" and equated the emotional distress suffered by the Graceys "at least equal to that typically suffered by the victim of a defamation or an invasion of privacy". Id. at 352. This Court continued "we can envision few occurrences more likely to result in emotional distress than having one's psychotherapist reveal without authorization or justification the most confidential details of one's life." Id. at 356. In answering the certified question in the negative thus reversing the Fifth District Court of Appeal, this Court stated

[O]ur people must have access to the courts without an artificial impact rule limitation, to afford redress if and when the fiduciary duty flowing from the confidential

relationship and statutory protection is defiled by the disclosure of the most personal of information.

Id. at 352.

Any question as to whether a fiduciary duty of confidentiality arises in the clergyman/lay individual relationship was answered in Doe v. Evans, 814 So. 2d 370 (Fla. 2002). In Doe, a fiduciary relationship with a corresponding duty of trust and confidence was found to have been created by a Reverend and his church with Doe. 814 So. 2d at 375. The Reverend and the church had "directly solicit[ed Doe's] trust and confidence" in the offering of spiritual counseling on marital issues. Id. at 372. Doe sued both the Reverend and the church claiming the Reverend breached his fiduciary duty when he became romantically involved with her thereby "failing to adequately keep [her] interests paramount." Id. Doe also alleged the church breached its fiduciary duty when it failed to protect Doe from the Reverend's abuse of trust. Id. The church moved to dismiss on First Amendment grounds. Id.

In resolving the issue, this Court examined the characteristics of a fiduciary relationship and explained that a fiduciary relationship "exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that

relation." Id. at 374. Such a "relationship may be implied by law" through a consideration of "'the specific factual situation surrounding the transaction and the relationship of the parties.'" Id. "The relation and duties involved need not be legal; [but] may be moral, social, domestic or personal." Id. This Court took guidance from a Colorado case which explained that "a clergy member who undertakes a counseling relationship creates a fiduciary duty 'to engage in conduct designed to improve the [plaintiffs'] marital relationship. As a fiduciary, [the clergy member] was obligated not to engage in conduct which might harm [the plaintiffs' marital] relationship.'" Id. (citing Destefano v. Grabian, 763 P.2d 275, 284 (Colo. 1988)). Thus, this Court found that a fiduciary relationship existed because the "church, through its clergy, [held] itself out as qualified to engage in marital counseling and a counseling relationship [arose]." Id. at 375.

After Gracey, this Court again considered the application of the impact rule to another breach of fiduciary duty claim. In Rowell v. Holt, 850 So. 2d 474, 477 (Fla. 2003), the plaintiff sought damages for mental anguish resulting from his loss of liberty due to the assistant public defender's delay in obtaining his release from jail. At trial, the defendant sought to preclude admission of mental anguish damages based on the

impact rule. Id. The trial court allowed the evidence of damages holding the impact rule inapplicable. Id. The district court reversed. Id.

This Court considered the certified question of whether the impact rule precludes recovery to one whose liberty is lost due the negligence of another resulting in emotional distress damages. Id. at 475-76. In resolving the question, this Court stated that when "foreseeability and gravity of the emotional injury involved, and lack of countervailing policy concerns have surmounted the policy rationale undergirding application of the impact rule," the rule is not applied. Id. at 478. A cause of action was found based upon a breach of a "the special professional duty" arising from the attorney/client relationship because causation was "straightforward and beyond reasonable dispute", the "emotional harm resulting from a protracted period of wrongful pretrial incarceration" was clearly foreseeable, and the emotional damages claimed were significant. Id. at 479, 480. This Court answered the certified question in the negative holding the application of the impact rule is "unjust and without an underlying justification in the factual circumstances... ." Id. at 476, 479.

Similarly, Woodard sued for a breach of fiduciary duty seeking emotional distress damages. [R114-17]. Woodard alleged

a fiduciary relationship and the corresponding duty of confidentiality, the breach of the duty, and the emotional damages suffered as a result. [R114-17]. The allegations show that Bellhorn and JCS owed Woodard a duty of confidentiality not only because of the sensitive nature of the confession, but also because of his promise to Woodard to keep the confession secret. [R114-17]. Woodard's desire to seek salvation at Bellhorn's encouragement and the publication by Bellhorn and JCS of Woodard's confession resulted in Woodard suffering emotional distress. [R115-17].

Woodard's cause of action fits squarely within this Court's reasoning for not applying the impact rule. First, the damages suffered by Woodard were foreseeable in that a breach of the fiduciary duty of confidentiality results in mental anguish to the one whose confidences are betrayed. See Gracey, 837 So. 2d at 356. It is foreseeable that Woodard would become emotionally scarred by Bellhorn's and JCS' breach of confidentiality in light of the conflict Woodard needed to resolve between his religious convictions and his sexual orientation. The expectation for this confession to remain confidential is no different from that involved in the psychotherapist/patient context described in Gracey. "[T]he outright denial of a claim for mental pain and anguish which is so likely to be

experienced...by the negligence of another" is difficult to justify. Tanner v. Hartog, 696 So. 2d 705, 708 (Fla. 1997); see also Kush v. Lloyd, 616 So. 2d 415, 422 (Fla. 1992)("[T]he impact doctrine...is inapplicable to...torts in which damages often are predominantly emotional.").

Second, there is a direct causal link between the breach and Woodard's suffering of emotional distress. But for the unauthorized disclosure of his confidential confession, Woodard would not have suffered emotional damages. By disclosing Woodard's homosexuality to others, Bellhorn and JCS revealed an intimate, confidential conflict in Woodard's life to those whom Woodard never intended to gain that knowledge. Woodard became a spectacle, suffering emotional distress because his confidential confession became public.

Third, the damages flowing from the breach of fiduciary duty in this case are correspondingly consequential. The emotional distress Woodard suffered from the public criticism received because he was Christian and homosexual could be nothing but significant. As the legal and policy justifications calling for the application of the impact rule are not present in this case, this Court should answer the certified question in the negative.

In his concurring opinion, Judge Stone opined that Bellhorn was nothing but a teacher. Woodard, 2005 Fla. App. LEXIS 16261 at *9. The implication then is that no fiduciary duty could thus arise. While the Second Amended Complaint contains allegations that Bellhorn was a Bible teacher and that Woodard was a student, there are also allegations that Bellhorn was a clergyman, that Woodard believed Bellhorn to be a clergyman, and that Woodard accepted counsel from Bellhorn in his role as clergyman. [R102, R114, R115]. Taking these allegations in the light most favorable to Woodard, Bellhorn acted as a chaplain in his counseling relationship with Woodard. Thus, the allegations state a cause of action.

Respondents had argued below that the allegations did not establish Bellhorn was a clergyman as he did not possess the necessary religious accolades determined relevant by section 90.505(1), Florida Statutes. However, section 90.505(1) does not limit the application of the privilege to those individuals with formal religious attributes. Instead, the privilege encompasses those individuals the confider believes is a member of the clergy. Section 90.505(1) states "or an individual reasonably believed so to be by the person consulting him or her." Since Woodard believed Bellhorn to be a clergyman, [R115], Bellhorn was a clergyman in his dealings with Woodard.

In her majority opinion, Judge May applied section 90.505 in defining what constitutes a fiduciary relationship giving rise to a duty of confidentiality as it regards the clergy/lay individual relationship. Woodard, 2005 Fla. App. LEXIS 16261 at *6-*8. Judge May did not consider Doe's instructions with the facts of this case. Since Woodard pled both a fiduciary duty and a statutory duty of confidentiality, [R116], the actual determination of what constitutes a confidential fiduciary relationship in this case is not limited solely to a statutory basis. Doe allows a consideration of "the specific factual situation surrounding the transaction and the relationship of the parties" in determining the existence of a fiduciary relationship. 814 So. 2d at 374. The facts in this case give rise to the fiduciary duty without the necessity of finding a statutory basis for the duty.

Woodard's breach of fiduciary duty action does not trigger the impact rule's policy justifications and, as such, the certified question should be answered in the negative. Maintaining communications by and between clergy and confessors as confidential promotes the State's public policy that emotional survival is to be guarded.

CONCLUSION

The privacy expectations in the clergyman/lay individual relationship, as in the psychotherapist/patient relationship, are implicit. Opening up personal secrets to public scrutiny can only be distressing to the one whose confidences have been betrayed. For Woodard, the betrayal not only resulted in public criticism, but also deprived him of the ability to privately reconcile his religious convictions with his sexual orientation. He, thus, suffered emotional distress. Since the damages suffered by Woodard are primarily emotional, the policy concerns of the impact rule are not implicated and the rule is irrelevant to this case. Application of the impact rule to this case would not only foreclose Woodard's cause of action, but also would eviscerate the longstanding concept that private communications with one's clergy are private. Therefore, this Court should answer the certified question in the negative.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was forwarded this ____ day of November, 2005 to W. Trent Steele, Esq., 2897 S.E. Ocean Blvd., Stuart, FL 34996; and

John L. Bryan, Esq., 4400 PGA Blvd., Suite 800, Palm Beach
Gardens, FL 33410.

LEGAL AID SOCIETY OF PALM BEACH
COUNTY, INC.
Juvenile Advocacy Project
423 Fern Street - Suite 200
West Palm Beach, FL 33401
(561) 655-8944 ext. 242
(561) 655-5269 (fax)

By _____
Michelle Hankey, Esq.
Fla. Bar #: 827835

By _____
William W. Booth, Esq.
Fla. Bar #: 948519

CERTIFICATE OF FONT COMPLIANCE

The undersigneds certify that this Initial Brief on the
Merits complies with the font requirements of Rule 9.210(a)(2),
Florida Rules of Appellate Procedure.

By _____
Michelle Hankey, Esq.
Fla. Bar #: 827835

By _____
William W. Booth, Esq.
Fla. Bar #: 948519