IN THE SUPREME COURT OF THE STATE OF FLORIDA

DEAN DYESS,

Petitioner,

CASE NO.: SC07-1741
LT Case No.: 4D06-1486

-vs-

JORDAN FIELDS, as Personal Representative of the Estate of CHRISTOPHER JONES,

Respondent.
_____/

PETITIONER DEAN DYESS' JURISDICTIONAL BRIEF

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STATEMENT OF THE CASE

This action arises from the accidental death of a minor child, Christopher Jones, which occurred on May 10, 2003 at the Thunder Cross Motor Sports Park in Okeechobee, Florida. Christopher Jones was the fourteen year old son of Bobby and Bette Jones. Bobby and Bette Jones were divorced on or about March 31, 2003. Mr. Jones was the custodial parent of Christopher and had the responsibility for his son's care on a day-to-day basis.

Bobby Jones and his sons enjoyed racing all terrain vehicles ("ATVs"). Mr. Jones took Christopher to Thunder Cross Motor Sports Park to allow him to race and ride on several occasions. In order for Christopher to be allowed to race, Mr. Jones was required by the Park to execute a Release and Waiver of Liability which authorized Christopher to participate in racing practice sessions with his ATV. On the day of the accident, Mr. Jones, as the custodial parent, executed a Release on Christopher's behalf. The Release executed by Mr. Jones expressly included specific language waiving claims based upon negligence and acknowledging the dangerous nature of the activities and the risk of serious injury or death.

On or about January 4, 2005, FIELDS, as Personal Representative of the estate of Christopher Jones, filed suit. DYESS filed his Answer and Affirmative Defenses to the Amended Complaint on June 1, 2005. On March 8, 2006, the trial court granted the Defendants' Motions for Summary Judgment, dismissing the case

with prejudice. The trial court found that a parent may waive the personal injury rights of his minor child and upheld the validity of the waiver and release executed by Mr. Jones based upon *Theis v. J&J Racing,* 571 So. 2d 92 (Fla. 2d DCA 1990) and *Lantz v. Iron Horse Saloon*, 717 So. 2d 590 (Fla. 5th DCA 1998). On appeal, the Fourth District Court of Appeal reversed the trial court's final summary judgment. *Fields v. Kirton*, 961 So.2d 1127 (Fla. 4th DCA 2007). While reversing the trial court, the Fourth District Court of Appeal certified a conflict with *Lantz v. Iron Horse Saloon*, 717 So. 2d 590 (Fla. 5th DCA 1998). In addition, the district court certified the following question as a question of great public importance:

> *WHETHER A PARENT MAY BIND A MINOR'S ESTATE BY THE PRE-INJURY EXECUTION OF A RELEASE.*

On September 10, 2007, DYESS filed his Notice to Invoke the Discretionary Jurisdiction of the Florida Supreme Court. In the Notice, DYESS invoke jurisdiction on two grounds: (1) the question certified as on of great public importance, and (2) a certified conflict of decisions between the district courts. Pursuant to Florida Rules of Appellate Procedure 9.120(d), this jurisdictional brief is limited to the certification of direct conflict of decisions, but the Appellant also seeks jurisdiction predicated upon the certified question of great public importance.

SUMMARY OF ARGUMENT

The district court in this case ruled that a parent did not have the authority to forfeit a property right inuring to the minor or the minor's estate and, therefore, Florida law did not support judicial enforcement of a pre-injury release executed by a parent on behalf of a minor. In *Lantz v. Iron Horse Saloon*, 717 So. 2d 590 (Fla. 5th DCA 1998), the Fifth District Court of Appeal, under similar facts, upheld and enforced a pre-injury release executed by a parent on behalf of a minor. This is a direct conflict. This Court should accept jurisdiction to settle for all businesses and parents whether or not pre-injury waivers and releases executed by a parent on behalf of a minor are enforceable in the State of Florida.

ARGUMENT

A. The Decision of The District Court Below is in Conflict with *Lantz*.

This case squarely presents the question of whether a parent my bind a minor child or the child's estate by executing a pre-injury waiver and release on behalf of the child. In the case at bar, Christopher Jones, a minor child, died on May 10, 2003, as a result of injuries suffered in an accident while racing an ATV at the Thunder Cross Motor Sports Park in Okeechobee, Florida. Christopher Jones was the fourteen year old son of Bobby Jones, the custodial parent of Christopher. In order for Christopher to be allowed to race, Mr. Jones executed a Release and Waiver of Liability which authorized Christopher to participate in

racing practice sessions with his ATV. On the day of the accident, Mr. Jones, as the custodial parent, executed a Release on Christopher's behalf. DYESS raised the Release and Waiver executed by Mr. Jones as a complete defense to the claims asserted by the Plaintiff. The trial court entered summary judgment in favor of DYESS finding that the Release and Waiver executed by Mr. Jones was enforceable and that it barred the claims against DYESS.

On appeal, the Fourth District Court of Appeal reversed the trial court's summary judgment. In its opinion below, the Fourth District Court of Appeal initially found that "[t]here is no basis in common law for a parent to enter into a compromise or settlement of a child's claim, or to waive substantive rights of the child without court approval." *Fields v. Kirton*, 961 So.2d 1127, 1130 (Fla. 4th DCA 2007). The Court went on to note that there was no statutory scheme governing the issue of a pre-injury release signed by a parent on behalf of a minor child. *Id*. at 1130. Based upon the absence of any statutory scheme enacted by the Florida Legislature, the Court concluded that:

> It is clear the waiver signed by Bobby Jones on behalf of his minor son constituted the forfeiture of a property right that uniquely inures to the minor son's estate. For these reasons, Florida law does not support judicial enforcement of a pre-injury release executed by a parent on behalf of a minor.

Id. at 1130. For this reason, the Fourth District Court of Appeal reversed the trial court's final summary judgment.

The Fourth District Court of Appeal's opinion here directly conflicts with the results reached by the Fifth District Court of Appeal in *Lantz v. Iron Horse Saloon*, 717 So. 2d 590 (Fla. 5th DCA 1998). The Court in *Lantz* faced a remarkably similar factual scenario to that at issue in this case. *Lantz* involved a suit filed by a mother, Rita Schierer, as a natural guardian of her minor son, Jesse Lantz. Lantz was injured while riding a "pocket bike" on the premises of the Defendant, Ironhorse Saloon, Inc. *Lantz*, 717 So. 2d at 590-91. Before Lantz was permitted to ride the bike, the Defendant required the execution of a release. *Id*. at 591. The Defendant raised the release as a defense to the negligence claims filed by Ms. Schierer on behalf of her son. *Id*. at 591. The trial court dismissed the complaint on the basis of the release. *Id*. at 591.

On appeal, the Fifth District Court of Appeal affirmed the dismissal. The Court analyzed the effectiveness of the release under the traditional examination of the language of the release. *See Id*. at 591-92. Specifically, the Court reasoned that, in order to release a party from liability for its own negligence, the language must be clear and unequivocal and "so clear and understandable that an ordinary and knowledgeable party will know what he is contracting." *Id*. at 591. The Court concluded that the language in the release utilized by IronHorse was sufficient to release the claims based on Ironhorse's own negligence. *Id*. at 592. Accordingly, the Court affirmed the trial courts dismissal.

The result of the decision in *Lantz* was to affirm the validity of the pre-injury release executed by the mother on behalf of her minor child. Although clearly aware that the release at issue involved the pre-injury release of the claims of a minor, the *Lantz* court did not address this issue, but affirmed the validity of the release. This result is in direct conflict with the result in this case where the Fourth District Court of Appeal declared such releases invalid. The nature of this conflict was recognized by the Fourth District Court of Appeal:

> We note the implicit conflict between this decision and *Lantz v. Iron Horse Saloon*, 717 So. 2d 590 (Fla. 5th DCA 1998). There, the mother signed a similar pre-injury release so that her minor son could ride a pocket bike, and subsequently brought action against the premises owner/proprietor when the boy was injured due to negligence. The Fifth District held the release was sufficient to bar the boy's claim. Although that case traveled to the appellate court with a different procedural posture, the *Lantz* court held the release to be enforceable. We certify conflict with *Lantz*.

Despite the different reasoning presented in each court, a clear conflict exists between the Fourth District and the Fifth District opinions as to the validity of pre-injury releases executed by a parent on behalf of a minor child.

Given the existence of the conflict between the Fourth District Court of Appeal's decision in this case and *Lantz*, this Court has discretionary jurisdiction to consider and determine this matter on the merits. *See* Rules 9.030 (a)(2)(A)(iv) and (vi), Florida Rules of Appellate Procedure. It is imperative that this Court

exercise its discretion and accept jurisdiction in this case. The issue regarding the enforceability of pre-injury releases executed by parents on behalf of minors affects a myriad of activities and businesses that stretch across a broad spectrum of Florida's economy. Such releases are utilized throughout Florida by diverse businesses both for profit and not for profit. The proliferation of the use of such releases requires a uniform law applicable across the state. Accordingly, this Court should recognize the conflict existing between the decision rendered below and the decision rendered in *Lantz*, and exercise its discretion to accept jurisdiction in this case under Rules 9.030(a)(2)(A)(iv) and (vi), Florida Rules of Appellate Procedure.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should accept jurisdiction based upon the certified conflict between the Fourth District Court of Appeal's decision below and the Fifth District Court of Appeal's decision in *Lantz v. Iron Horse Saloon*, 717 So. 2d 590 (Fla. 5th DCA 1998), permit the filing of briefs on the merits, and grant any further relief as may be deemed appropriate.

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that, pursuant to Florida Rules of Appellate Procedure, this jurisdictional brief complies with the font requirements.

Dated this ___ day of October, 2007.

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished *via* facsimile and by United States Mail to Guy Bennett Rubin, Esquire and Laurence C. Huttman, Esquire, Rubin & Rubin, P.O. Box 395, Stuart, Florida 34995, William Wallace, Esquire, 115 NW 11 Avenue, Okeechobee, Florida 34972, Alan C. Espy, Esquire, 3300 PGA Boulevard, Palm Beach Gardens, Florida 33410 and to Bard D. Rockenbach, Burlington & Rockenbach, P.A., 2001 Professional Building/Suite 410 2001, Palm Beach Lakes Blvd., West Palm Beach, Florida 33409; and by U.S. Mail only to Timothy J. Owens, Esquire, Christensen & Christensen, 401 North Front Street, Suite 350, Columbus, Ohio 43215, counsel to American Motorcyclist Association and Matthew W. Monroe, Esquire and Jill Anne Hillman, Esquire, Monroe & Zinder, P.C., 5933 West Century Boulevard, Suite 800, Los Angeles, CA 90045, counsel to National Association Of Underwater Instructors this ___ day of October, 2007.

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