IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

CASE NO. SC07-1742

H. SPENCER KIRTON, KIRTON BROTHERS LAWN SERVICE, INC.,

Petitioners,

-vs-

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

Respondent.
_____/

BRIEF OF RESPONDENT ON JURISDICTION
On appeal from the Fourth District Court of Appeal

RUBIN & RUBIN
P.O. Box 395
Stuart, FL 34995
and
BURLINGTON & ROCKENBACH, P.A.
2001 Professional Building/Suite 410
2001 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
(561) 721-0400
(561) 721-0465 (fax)
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

PAGE

PREFACE

This proceeding involves the Petitioner=s attempt to obtain jurisdiction in this Court based on an alleged conflict between the Fourth District=s decision and a decision of the Fifth District Court of Appeal. The parties will be referred to by their proper names or as they appear in this Court. The following designation will be used:

(A) - Petitioner=s Appendix

(AA) - Respondent's Appendix

STATEMENT OF THE CASE AND FACTS

This Petition arises out of an accident in which Christopher Jones was killed while riding an all terrain vehicle (ATV) at a motorsports park owned and operated by the Petitioners. Christopher Jones was 14 years old at the time of the accident (AA2). Stated succinctly, the track owned and operated by the Petitioners was designed for use by much more experienced riders than Christopher Jones and had one jump which caused inexperienced riders such as Christopher problems. In fact, Christopher had an accident on that same jump one month before the May 10, 2003 accident in which he was killed (AA2). In that earlier accident Christopher was injured. In addition to the dangerous condition of the track and design of the jumps, Christopher was riding the track on an ATV which was much more powerful than the industry guidelines allow for a boy Christopher=s age.

Bobby Jones was the primary custodial parent (AA2). Bobby Jones did not consult with Bette Jones regarding his decision to allow Christopher to ride the ATV on the Petitioner=s track, nor did he inform Bette Jones when Christopher was hurt on the track in a prior accident (AA2).

In order to gain access to the motorsports track, Bobby Jones had to sign a release stating that Christopher Jones waived all claims arising out of injuries inflicted at the park (AA2). Bobby Jones signed one for his son, Christopher, as well as several other children who are not his children. After Christopher was killed, his estate brought a wrongful

death action. The trial court entered summary judgment in favor of Petitioners based on the release signed by Bobby Jones, which was supported by an affidavit Bobby Jones signed in favor of Petitioners.

The Fourth District reversed, holding that a parent does not have the legal authority to sign a release of all claims held by a minor. It certified a question of great public importance and certified a conflict. Specifically, the Fourth District wrote (Fields v. Kirton, 961 So.2d 1127, 1130 (Fla. 4th DCA 2007)) (AA4):

> We note the implicit conflict between this decision and Lantz v. Iron Horse Saloon, Inc., 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 an 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.

This Petition followed.

SUMMARY OF ARGUMENT

Although the District Court certified conflict, the conflict was an Aimplicit@ conflict, not an express conflict in the decisions. The decision in Lantz was concerned only with the scope of the release signed by the parent, not whether the parent had the authority to sign the release. The court was not asked to decide whether the release was valid.

As a result, there is no direct conflict, nor any express and direct conflict, between the decision of the Fourth District in the case and the decision of the Fifth District in Lantz.

ARGUMENT

QUESTION PRESENTED

> WHETHER THE DECISION OF THE FOURTH DISTRICT CONFLICTS WITH THE DECISION OF THE FIFTH DISTRICT IN LANTZ v. IRON HORSE SALOON, INC.

The Florida Constitution, Article 5 '' 3(b)(3) and (4) provide for discretionary review by this Court of decisions certified by the district courts of appeal. The sections provide that this Court (emphasis added):

> (3) May review any decision of a district court of appeal … that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law.
>
> (4) May review any decision of a district court of appeal that passes upon a question certified by it to be of great public importance, or that is certified by it to be in direct conflict with a decision of another district court of appeal.

These constitutional provisions are reflected in Rule 9.030(a)(2)(A)(iv and vi), Fla. R. App. P.

Pursuant to Article V, the Fourth District certified its decision in Fields v. Kirton to be in conflict with the decision of the Fifth District in Lantz v. Iron Horse Saloon, Inc., 717 So.2d 590 (Fla. 5th DCA 1998). Although the Fourth District certified an implicit conflict, the Notice to Invoke Discretionary Jurisdiction filed by the Petitioner did not cite 9.030(a)(2)(A)(vi), Fla.R.App.P. as a basis for jurisdiction. The Notice was based only

on subsection (v) regarding a question certified to be of great public importance, and subsection (iv) which is express and direct conflict with the decision of another district court of appeal. The Notice then goes on to state that the basis is a certified direct conflict, which would involve subsection (vi). The jurisdictional brief filed by Petitioner addresses both sections.

Although the Fourth District certified a conflict, the conflict certified was implicit. It was not a direct conflict with Lantz. In Lantz, the Fifth District was asked to decide whether a release signed by a parent which released Iron Horse Afrom all, and all manner of action and actions, cause and causes of action, suits ... damages ... claims and demands whatsoever, in law or in equity, which [Lantz] ever had, now has,...hereafter can, shall or may have, against [Iron Horse] for upon or by reason of any matter, cause or thing whatsoever ...@ was sufficient to release Iron Horse for acts of its own negligence (AA6). The Fifth District held that the release sufficiently stated that it applied to negligence claims, even though it did not use the word Anegligent@ or Anegligence@ (AA7).

In the opinion, the Fifth District took care to point out that the decision under review was from a motion to dismiss, not a summary judgment or judgment on the pleadings, and that the only issue it was asked to decide was the substantive issue of whether the release language was specific enough to include negligence claims (AA6).

In the decision below, the Fourth District noted Athe implicit conflict between this decision and Lantz v. Iron Horse Saloon, Inc., 717 So.2d 590 (Fla. 5th DCA 1998).@

Although the court noted Athat [Lantz] traveled to the appellate court with a different procedural posture,@ it nevertheless certified conflict with Lantz (AA4).

As a result of the difference between the holdings of each court, the decision of the Fourth District in this case does not directly conflict with the Fifth District=s decision in Lantz. Although the decision in Lantz that a release signed by a parent can be effective to destroy negligence claims, the court did not pass on the legal issue raised in the Fourth District and decided in this case. The decision in Lantz does not directly conflict with the decision in Fields because it does not address the same question. Lantz only holds that a release which releases the activity provider from Aall, and all manner of action and actions, cause and causes of action, suits...damages...claims and demands whatsoever, in law or in equity, which [plaintiff] ever had, now has,...hereafter can, shall or may have@ is sufficient to release the activity provider from all claims of negligence.

Nor does the decision in Fields expressly and directly conflict with the decision in Lantz as is required by 9.030(a)(2)(A)(iv), Fla.R.App.P. Because the Fifth District and the Fourth District decided their cases on different issues, the decisions do not expressly and directly conflict. Nooe v. State, 930 So.2d 579 (Fla. 2006).

Subsequent to the decision in Fields, the Third District issued its decision in Krathen v. School Bd. of Monroe County, 2007 WL 2848127 (Fla. 3d DCA 2007) (A8). The court held, without citation to any authority, that A[b]ecause it is within a parent's authority to make this decision on behalf of his or her child, Krathen and her

parent/guardian are bound by the Release.@ A motion for rehearing in that appeal is currently pending. The decision in Krathen appears to conflict with the decision in this case. However, the Notice to Invoke Discretionary Jurisdiction filed in this case did not raise an express and direct conflict with Krathen pursuant to Article V of the Florida Constitution.

CONCLUSION

The opinion in the court below does not directly conflict with the decision in Lantz. This Court should refuse to exercise its jurisdiction on that basis.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was furnished by mail to WILLIAM J. WALLACE, ESQ., 115 N.W. 11th Ave., Okeechobee, FL 34972; RICHARD LEE BARRETT, ESQ., Barrett, Chapman and Ruta, 18 Wall St., Orlando, FL 32801; and ALAN C. ESPY, ESQ., 3300 PGA Blvd., Ste. 630, Palm Beach Gardens, FL 33410, by mail, on October 25, 2007.

Lawrence C. Huttman, Esq.
RUBIN & RUBIN
P.O. Box 395
Stuart, FL 34995
and
BURLINGTON & ROCKENBACH, P.A.
2001 Professional Building/Suite 410
2001 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
(561) 721-0400
(561) 721-0465 (fax)
Attorneys for Respondent
bdr@FLAppellateLaw.com

By:_____
BARD D. ROCKENBACH
Florida Bar No. 771783

F:\BDR\Fields v. Kirton\SC07-1739\SCT.wpd\GG

CERTIFICATE OF TYPE SIZE & STYLE

Respondent hereby certifies that the type size and style of the Brief of Respondent on Jurisdiction is Times New Roman 14pt.

_____

BARD D. ROCKENBACH
Florida Bar No. 771783