In the Supreme Court of Florida

CASE NO.: SC09-2238

MARIA CEVALLOS,

Petitioner,

v.

KERI ANN RIDEOUT and LINDA RIDEOUT,

Respondents.

ON DISCRETIONARY REVIEW FROM THE
FOURTH DISTRICT COURT OF APPEAL

RESPONDENTS' BRIEF ON JURISDICTION

Respectfully submitted,

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STATEMENT OF THE CASE AND FACTS

For purposes of assessing potential conflict jurisdiction, the only relevant facts are those appearing within the four corners of the decision." *Reaves v. State*, 485 So. 2d 829, 830 (Fla. 1986). "Conflict between decisions must be express and direct, i.e., it must appear within the four corners of the majority decision. Neither a dissenting opinion nor the record itself can be used to establish jurisdiction." *Id.*

Despite this long-established law, the statement of facts in Petitioner's jurisdictional brief does not confine itself to the facts appearing in the Fourth District's decision. Instead, Petitioner recites three and a half pages of 'facts' with no record cites and no Appendix cites because the 'facts' are outside the subject decision. Petitioner's statement of the facts should accordingly be disregarded. Petitioner's statement of the Fourth District's legal conclusions is also inaccurate, as detailed in the Argument below, so the arguments presented for exercise of conflict jurisdiction are simply not based on the actual decision.

The facts that are actually pertinent to this Court's potential exercise of conflict jurisdiction are those set out in the Fourth District's decision itself. (The decision is attached as an Appendix hereto for ease of reference, and cited as A 1 - A 4). As recited in the decision, this case arose from a chain collision situation, i.e., a series of collisions in a lane of traffic caused by a stopped car ahead:

The accident occurred when a non-party attempted to avoid a disabled

> vehicle on the downhill slope of an overpass. Two non-party vehicles were able to avoid colliding with the disabled vehicle and each other. The third vehicle driven by the defendant, the fourth vehicle driven by the plaintiff, and the fifth vehicle driven by another non-party, were not that lucky.
>
> The defendant's vehicle struck the second vehicle, the plaintiff struck the defendant, and the fifth vehicle struck the plaintiff.

(Fourth District Decision, A 1). As addressed in the Argument below, the Fourth District's decision turns on these facts, and not on the extraneous commentary in Petitioner's jurisdictional brief.

SUMMARY OF ARGUMENT

There is no basis for exercise of conflict jurisdiction in this case because the decision of the Fourth District does not conflict with any decisions of other district courts or of this Court. In fact, the Fourth District's decision is completely in line with the cases on the specific principle of law involved in this chain collision case, including this Court's controlling decision in *Clampitt v. D.J. Spencer Sales,* 786 So. 2d 570, 572-73 (Fla. 2001). Accordingly, Respondents respectfully submit that Petitioner's request for review should be denied.

ARGUMENT

As the Fourth District decision accurately discusses, 'chain collisions' have been specifically addressed in the Florida law as to the presumption created by

rear-end collisions. The Fourth District first noted the general rules as to the presumption and the showings necessary to overcome the presumption:

> "In Florida, there is a rebuttable presumption that the negligence of the rear driver in a rear-end collision was the ***sole proximate cause*** of the accident." *Dep't of High. Saf. & Motor Vehs. v. Saleme*, 963 So. 2d 969, 972 (Fla. 3d DCA 2007) (emphasis added). *See also Eppler v. Tarmac Am.*, Inc., 752 So. 2d 592, 594 (Fla. 2000) (discussing *Jefferies v. Amery Leasing, Inc.*, 698 So. 2d 368, 370-71 (Fla. 5th DCA 1997) and *Gulle v. Boggs*, 174 So. 2d 26 (Fla. 1965)). A rear-driver defendant can overcome the presumption by establishing that the lead-driver plaintiff stopped abruptly and arbitrarily. Once the rear-driver defendant overcomes the presumption, the burden of proof on the proximate cause of the collision reverts back to the plaintiff, who can no longer rely on the presumption to establish the sole proximate cause of the accident. *Id.* at 594-95.
>
> Where the plaintiff is the rear driver, however, the rear-driver plaintiff, like the rear-driver defendant, must prove that the lead-driver stopped ***abruptly and arbitrarily*** to rebut the presumption that the plaintiff's own negligence was the ***sole proximate cause*** of the accident. Phrased another way, the evidence must establish that the rear-driver plaintiff cannot reasonably have been expected to anticipate the lead driver's sudden stop. *Pierce v. Progressive Am. Ins. Co.*, 582 So. 2d 712, 713-14 (Fla. 5th DCA 1991) (*en banc*). More importantly, a rear-driver plaintiff cannot rely on the mere fact that the lead-driver defendant "ran into a preceding vehicle" without "material evidence of negligence" on the part of the lead-driver defendant in stopping abruptly. *Id.* at 714-15.

(Fourth District Decision, A 2)(court's emphasis).

As discussed by the Fourth District, this Court's decision in *Clampitt v. D. J. Spencer Sales*, 786 So. 2d 570 (Fla. 2001), directly addressed the circumstances presented in chain collision cases - in which each driver is faced with the fact of a

car stopped ahead in a lane of traffic - a showing of which does ***not***, as a matter of law, qualify as a showing of an '***abrupt and arbitrary***' stop that will overcome the presumption that the rear driver's negligence was the sole proximate cause of his/her collision with the car ahead. The reason for this rule set out in the *Clampitt* decision - and followed by the Fourth District here - is that *as a matter of public policy* the law requires all drivers to "push ahead of themselves an imaginary clear stopping distance or assured stopping space or adequate zone within which the driven vehicle can come to a stop":

> The distinction between a presumption of comparative negligence and a presumption of the sole cause of the accident is reasonably related to the purpose of the presumption. Not only does the "sole cause of the accident" presumption relieve the lead-driver plaintiff of the difficult task of adducing "proof of all four elements of negligence," it serves the additional public policy of ensuring that all drivers "push ahead of themselves an imaginary clear stopping distance or assured stopping space or adequate zone within which the driven vehicle can come to a stop." *Clampitt v. D.J. Spencer Sales*, 786 So. 2d 570, 573, 575 (Fla. 2001) (quoting *Jefferies*, 698 So. 2d at 370-71) and *Lynch v. Tennyson*, 443 So. 2d 1017, 1020-21 (Fla. 5th DCA 1983) (Cowart, J., dissenting)). It further avoids the burden of proof being shifted to the lead-driver defendant.

(Fourth District Decision, A 2-3).

The Fourth District further quoted the Court's explanation in *Clampitt* that: "[A]ccidents on the roadway ahead are a routine hazard faced by the driving public. Such accidents are encountered far too frequently and are to be reasonably expected. Each driver is charged under the law with remaining alert and following

the vehicle in front of him or her at a safe distance." (Fourth District Decision, A 3, *quoting Clampitt*, 786 So. 2d at 575).

In *Clampitt*, this Court expressly approved the decision in *Pierce v. Progressive American Insurance Co*., 582 So. 2d 712 (Fla. 5th DCA 1991), which made it clear that the fact that a front vehicle driver may have been in a collision does not change the principle that *as a matter of law* each rear driver's negligence in a series of rear-end collisions, as occurred here, is deemed the sole proximate cause of that driver's rear-ending collision. As this Court summed up in *Clampitt*:

> This is a classic "sudden stop" case. Clampitt's auto stopped abruptly on the highway as the result of a collision with Huguley's trailer, and Hetz's tractor-trailer rig was unable to stop in time. ***Unfortunately, accidents on the roadway ahead are a routine hazard faced by the driving public. Such accidents are encountered far too frequently and are to be reasonably expected. Each driver is charged under the law with remaining alert and following the vehicle in front of him or her at a safe distance.*** [fn omitted].
>
> ***In effect the law requires all drivers to push ahead of themselves an imaginary clear stopping distance or assured stopping space or adequate zone within which the driven vehicle can come to a stop. Failure to maintain such a zone is normally the sole proximate cause of injuries and damages resulting from the collision of a vehicle with an object ahead.*** This is why when a vehicle collides with an object ahead of it, including the rear of a leading vehicle, there is a presumption of negligence on the part of the overtaking or following vehicle. *Lynch v. Tennyson*, 443 So. 2d 1017, 1020-21 (Fla. 5th DCA 1983) (Cowart, J., dissenting).
>
> Each driver must be prepared to stop suddenly (particularly during school and business hours on a roadway that is bordered by multiple business and residential establishments and a school, as in the present

> case). ***It is logical to charge the rear driver with this responsibility because he or she is the person who is in control of the following distance.***

786 So. 2d at 575-576.

The Fourth District decision explained that Plaintiff/Petitioner here, who showed only that she ran into the car ahead of her in a chain collision situation, had simply not met her burden of proving a sudden and *unexpected* stop, because, as the *Clampitt* Court said, "accidents on the road ahead are a routine hazard faced by the driving public ... to be reasonably expected." 786 So. 2d at 575. As to Plaintiff/Petitioner here, the Fourth District's decision notes: "The plaintiff failed to adduce evidence from which it could be reasonably inferred that the lead-driver defendant's sudden stop was one which could not reasonably be anticipated." (Fourth District Decision, A 3). The Fourth District thus concludes:

> The plaintiff has the burden to prove duty, breach of the standard of care, proximate cause, and damages. In this case, the plaintiff simply could not rebut the presumption that her own negligence was the sole legal cause of the collision. Accordingly, the trial court correctly directed a verdict for the defendant.

(Fourth District Decision, A 3).

The Plaintiff/Petitioner's case fell squarely within the *Clampitt/Pierce* circumstances under which her negligence in rear-ending a vehicle stopped by an accident in the lane ahead of her is deemed the sole proximate cause of her rear-ending collision as a matter of law. The Fourth District's decision correctly

followed - and directly comports with - the governing law from this Court on the chain collision issue presented, and thus presents no basis for conflict review.

Petitioner's conflict arguments ignore the fact that the focus of this Court's *Clampitt* decision - and of the subject Fourth District's decision which applies *Clampitt* - is on each following driver's negligence in a chain collision situation being deemed the ***sole proximate cause*** of that driver's running into the vehicle ahead for the public policy reason that the following driver "is the person who is in control of the following distance." *Clampitt*, 786 So. 2d at 576. Disregarding the ***sole proximate cause*** lynchpin of the *Clampitt* rule as to chain collisions - which was exactly what the Fourth District articulated - Petitioner ***re-writes*** the Fourth District's holding, attempting to replace it with an entirely different and overbroad proposition:

> The District Court's opinion states that unless the driver of a vehicle which rear ends another can prove she was entirely free of fault, as a matter of law, she is precluded from suing the lead driver.

(Petitioner's Brief on Jurisdiction, p 5). No cite is provided by Petitioner, because the Fourth District's decision makes no such holding. Petitioner's first conflict argument - asserting conflict with *Hoffman v. Jones*, 280 So. 2d 431(Fla. 1972) - is based on Petitioner's self-created 'holding' and thus no conflict is shown.

Nor is there any conflict with *Hoffman v. Jones*, which generally adopted for Florida the doctrine of comparative negligence to replace the older contributory

negligence bar. That general doctrine, however, has nothing to do with the specific public policy driven *Clampitt* rule as to ***sole proximate causation*** in chain collision cases, which is the rule that was followed by the Fourth District here.

Petitioner's second conflict argument claims conflict with *Eppler v. Tarmac America, Inc.*, 752 So. 2d 592 (Fla. 2000); *Chadbourne v. Van Dyke*, 590 So. 2d 1023 (Fla. 1st DCA 1991); *Jefferies v. Amery Leasing, Inc.*, 698 So. 2d 368 (Fla. 5th DCA 1997); and *Johnson v. Deep South Crane Rentals*, 634 So. 2d 1113 (Fla. 1st DCA 1994). (Petitioner's Brief on Jurisdiction, p 9). No conflict exists with these cases either as they address different factual scenarios than the specific chain collision situation for which the *Clampitt* rule was created and which was appropriately applied by the Fourth District here.

This Court in *Clampitt* specifically distinguished *Eppler* because *Eppler* involved - ***not*** just the sudden stop in a chain collision situation that *Clampitt* said is to be anticipated by following drivers as to potential accidents ahead in their lanes of traffic - but rather a sudden and ***arbitrary*** stop:

> The present case differs from *Eppler* wherein the forward driver allegedly made an abrupt and arbitrary stop in bumper-to-bumper accelerating traffic, i.e., a "gotcha" stop. Rather, this case is similar to *Pierce v. Progressive American Insurance Co.*, 582 So. 2d 712 (Fla. 5th DCA 1991), and other "sudden stop" cases wherein the forward driver merely stopped abruptly.

786 So. 2d at 574.

Chadbourne v. Van Dyke, 590 So. 2d 1023 (Fla. 1st DCA 1991) also did not involve the chain collision 'sudden stop' circumstances presented in *Clampitt* and this case so as to come within the *Clampitt* rule in which proximate causation is determined as a matter of law. Rather, *Chadbourne* involved a road roller going only 8-10 miles an hour on a highway with a speed limit of 55 m.p.h., which was then rear-ended by a driver traveling the roadway at normal speed.

Jefferies v. Amery Leasing, Inc., 6 So. 2d 368 (Fla. 5th DCA 1997), has a long discourse by the Fifth District - quoted in part in Petitioner's brief - on how the rear end negligence presumption should be applied *vis á vis* comparative negligence, which discourse turns out to be pure *dicta* because the case was decided based on the fact that there was no evidence in the record of negligence on the part of a lead driver that a rear driver sought to blame. *Jefferies* predates *Clampitt* and does not address facts like those presented in *Clampitt* and in the instant case. In *Clampitt*, this Court held that the issue of sole proximate causation is to be decided as a matter of law in cases, like the instant case, that present *Clampitt* or *Pierce* facts. Insofar as the *dicta* in *Jefferies* may suggest otherwise, *Clampitt* is clearly controlling. The Fourth District's decision here quite appropriately follows *Clampitt.*

Finally, *Johnson v. Deep South Crane Rentals*, 634 So. 2d 1113 (Fla. 1st DCA 1994), a 22-ton truck-mounted mobile crane pulled out onto a rural road traveling

20 miles per hour in a 45 miles per hour speed zone and was struck from the rear by a driver traveling 40 miles per hour. *Johnson* simply does not fall within the chain collision facts presented in *Clampitt*, *Pierce*, and the instant case.

A decision of a district court must "expressly and directly conflict ... with a decision of another district court of appeal or of the supreme court on the same question of law" in order to fall within the Court's conflict jurisdiction. Fla. Const., Art. V, § 3(b)(3); Fla. R. App. P. 9.030(a)(2)(A)(iv). No such conflict has been shown here, and thus no basis exists for exercise of conflict jurisdiction.

CONCLUSION

For the reasons set forth above, Respondents respectfully submit that Petitioner's request for discretionary review should be denied.

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the Respondents' Brief on Jurisdiction was sent by U.S. mail this 28th day of December, 2009 to Allen R. Seaman, Esquire, Seaman & Coven, P.A., Counsel for Petitioner Maria Cevallos, 803 Lake Avenue, Lake Worth, Florida 33460.

_____

CERTIFICATE OF COMPLIANCE WITH FONT STANDARD

Undersigned counsel hereby respectfully certifies that the foregoing Brief on Jurisdiction complies with Fla. R. App. P. 9.210 and has been typed in Times New Roman, 14 Point.

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