SUPREME COURT OF FLORIDA
TALLAHASSEE, FLORIDA

CASE NO.:

4th District Case No: 4D08-3042

MARIA CEVALLOS,

Petitioner,

v.

KERI ANN RIDEOUT and LINDA RIDEOUT,

Respondents.
_____/

PETITIONER'S JURISDICTIONAL BRIEF

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

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STATEMENT OF THE CASE AND FACTS

On January 27, 2005, Maria Cevallos, who was the Plaintiff in the trial court action, was involved in a car accident which caused her to suffer permanent injuries. Ms. Cevallos brought suit against Keri Rideout alleging that Ms. Rideout's negligence triggered the multi-vehicle collision in which Plaintiff was hurt. Rideout denied that she had been negligent and affirmatively averred that Cevallos was comparatively negligent.

The case proceeded to jury trial during which Plaintiff introduced evidence of Rideout's negligence. Rideout admitted that she failed to slow her vehicle as she approached and passed over a hill immediately before she crashed her vehicle into a line of stopped cars.[1] Rideout further admitted that she was on her way home from work at the time of the crash and had very little time in order to then make a scheduled doctor's appointment.

Cevallos testified that Rideout was using her cell telephone immediately before the crash. In addition the evidence showed that Rideout failed to slow her

[1] Florida Statute § 316.183(4)(c) requires a driver approaching the crest of a hill to slow her speed.

vehicle to any meaningful degree before slamming into the rear of a line of stopped cars.

As to the defense of comparative negligence, Rideout relied entirely on the fact that Cevallos had struck the rear of her SUV. Cevallos, however, testified that she struck the rear of Defendant's vehicle, only because the initial wreck caused by Rideout's negligence left her with no chance to avoid the collision.

It was undisputed that Plaintiff, Maria Cevallos, was driving at or below the speed limit of 45 miles per hour and was following Rideout's SUV at a safe distance of approximately four to five car lengths. Defendant did not contest the fact that Cevallos immediately applied her own brakes the moment she saw Rideout collide with the vehicle ahead of her.

At the conclusion of Plaintiff's case, Defendant moved for a directed verdict. Rideout's motion asked not only for the trial court to direct a verdict on the issue of Cevallos' alleged comparative negligence, but that the court rule, as a matter of law, that Plaintiff was also precluded from pursuing her claim against Defendant. Rideout argued that Cevallos was required to prove that she was entirely free of blame (i.e., free of any comparative negligence) in order for her to submit the factual question of Defendant's negligence to a jury.

Over Plaintiff's objection, the trial judge granted Defendant's motion, holding as a matter of law that Cevallos was negligent and, as such, her claim against Keri Rideout was barred. Plaintiff thereafter filed her notice of appeal to the Fourth District.

Appellant urged the District Court to reverse the trial court's order, arguing that even if the trial judge was correct in ruling that Plaintiff was negligent, such a finding would not prevent Cevallos from pursuing a claim because Rideout's negligence was a contributing cause of Plaintiff's damages. Appellant argued that because she had offered evidence of Rideout's own negligence, a factual issue was created which only a jury could resolve.

The District Court disagreed, holding that because Cevallos had struck the rear of Rideout's vehicle, unless Plaintiff could prove that she was entirely free of blame, the law required that she be presumed to have been "the sole proximate cause of the accident."

The Fourth District's opinion was filed on September 9, 2009, and is published at 18 So.3d 661 (Fla. 4th DCA, 2009). Appellant filed her motion for reconsideration, and for an en banc hearing which was denied by order of October 30, 2009. A timely motion asking the Supreme Court to invoke its discretionary

jurisdiction was filed on Monday, November 30, 2009.

Petitioner, Maria Cevallos, believes the holding of the Fourth District expressly and directly conflicts with decisions of other District Courts and prior rulings of the Florida Supreme Court. Cevallos has therefore filed her petition, asking this Supreme Court to accept jurisdiction to consider the merits of her argument, in order to correct the ruling of the lower court.

SUMMARY OF ARGUMENT

I

The decision of the Fourth District held that Plaintiff, Maria Cevallos, could not pursue a claim against Keri Rideout unless Cevallos could prove that she was free of any blame for the accident sued upon. Because the Florida Supreme Court, in *Hoffman v. Jones*, 280 So.2d 431 (Fla. 1973**)** replaced the doctrine of contributory negligence with the rule of comparative negligence, the District Court's opinion is in direct conflict with the holding of the Florida Supreme Court.

II

The Fourth District held that the presumption first established in the case of *McNulty v. Cusack*, 104 So.2d 785 (Fla. 2d DCA 1958) deems the driver of a vehicle which rear ends another to have been the "*sole* proximate cause" of an

accident, unless the rear driver can prove that she was free of all blame.

Decisions of both the First and Fifth Districts, as well as a case out of the Florida Supreme Court, have held that the McNulty Presumption speaks only to the question of the rear driver's negligence and has no bearing on the issue of the leading driver's conduct. Because Florida adheres to the rule of comparative negligence, even where the rear-end driver fails to overcome the presumption of negligence, the presumption does not absolve the lead driver of liability where there is evidence showing that she shares a portion of the blame.

Therefore, the Fourth District's decision in this case directly and expressly conflicts with the cases of *Chadbourne v. Van Dyke*, 590 So.2d 1023 (Fla. 1st DCA, 1991), *Johnson v. Deep South Crane Rentals*, 643 So.2d 1113 (Fla. 1st DCA, 1994), *Jefferies v. Amery Leasing*, 698 So.2d 368 (Fla. 5th DCA, 1997), and *Eppler v. Tarmac America*, 752 So.2d 592, 594 (Fla. 2000).

ARGUMENT I
Conflict with Hoffman v. Jones

The District Court's opinion states that unless the driver of a vehicle which rear ends another can prove that she was entirely free of fault, as a matter of law, she is precluded from suing the lead driver. The holding therefore directly conflicts with the Supreme Court's decision in *Hoffman v. Jones*, 280 So.2d 431

(Fla. 1973) which established the doctrine of comparative negligence as the law of the state.

Despite the clear mandate of the *Hoffman* case, the Fourth District's decision in the case at bar reinstates the doctrine of contributory negligence to a sub-set of cases which arise out of rear-end automobile accidents. The decision therefore directly conflicts with the prior ruling of this Supreme Court.

Plaintiff, herein, brought her suit against Defendant, alleging that Rideout's negligence triggered a chain reaction collision in which Cevallos was injured. The District Court erroneously focused only on the conduct of Plaintiff, Ms. Cevallos, rather than the actions of both parties. Plaintiff attempted to argue that a jury should have been allowed to consider the question of Rideout's negligence, even if Cevallos was partially at fault. The District Court rejected this argument, holding that:

> "The plaintiff argues that the rebuttable presumption of rear-driver negligence does not apply to bar a claim by a rear-driver plaintiff because a lead-driver defendant could be comparatively negligent. **In other words, a lead-driver defendant cannot use the presumption as a "shield" to require a rear-driver plaintiff to "establish the absence of negligence on her own part to pursue" her claim**. **We disagree.**" *Cevallos v. Rideout*, supra, (bold lettering added).

By holding that Ms. Cevallos was required "to establish the absence of negligence on her own part" in order to pursue a claim for negligence against Rideout, the Fourth District ignored the tenets of Florida's comparative negligence doctrine. If left to stand, the opinion of the District Court will revive the law of contributory negligence which this Supreme Court rejected in 1973.

Accordingly, the Supreme Court should accept jurisdiction based upon the fact that the Fourth District's opinion ignores the dictates of the Florida Supreme Court and expressly and directly conflicts with the Supreme Court's earlier decision in *Hoffman v. Jones,* supra.

ARGUMENT II

Conflict with Chadbourne v. Van Dyke, Johnson v. Deep South Crane Rentals, Jefferies v. Amery Leasing, and Eppler v. Tarmac America

The District Court's opinion not only violates the doctrine of comparative negligence, but conflicts with those cases which correctly applied the presumption of negligence first enunciated in the case of *McNulty v. Cusack,* 104 So.2d 785 (Fla. 2d DCA 1958).

Beginning with the case of *McNulty v. Cusack, id,* Florida courts have held that a presumption of negligence arises in the case of a rear-end collision wherein

the following driver is presumed to have been negligent, unless he can establish that, under the unique facts of the case, the presumption is misplaced.

The *McNulty* court reasoned that because the lead driver would, in most instances, be facing forward, she wouldn't see the other vehicle before the collision. Thus, to require the lead driver to prove what the rear-ending driver did to cause the collision would, in many instances, create an unfair and impossible burden.

To cure this difficulty, the court created a rebuttable presumption which required the driver of the following vehicle to show why he was not negligent, rather than forcing the lead driver to explain the Defendant's actions in order to establish a prima facie case.

This same reasoning does not apply, however, where the issue involves a claim of negligence against the leading driver. The lead driver needs no artificial presumption in order to effectively defend herself against a claim of negligence, since she, herself, would be in the best position to bring forth the proof required.

Thus, the Florida Supreme Court, in *Eppler v. Tarmac America*, 752 So.2d 592, 594 (Fla. 2000), specifically held that "the rebuttable presumption of negligence that attaches to the rear driver... bears only upon the causal negligence

of the rear driver."

In contravention to this ruling, the Fourth District, in the case at issue, nevertheless held that because Cevallos failed to overcome the presumption of negligence, she was deemed to be 100% responsible for the accident, and Rideout would be deemed free of any negligence, despite evidence to the contrary.

The Fourth District's decision expressly and directly conflicts with the First District's opinios in *Chadbourne v. Van Dyke*, 590 So.2d 1023 (Fla. 1st DCA, 1991, *and Johnson v. Deep South Crane Rental*, 643 So.2d 1113 (Fla. 1st DCA, 1994), the Fifth District case of *Jefferies v. Amery Leasing*, 698 So.2d 368 (Fla. 5th DCA, 1997), and the Supreme Court's ruling in *Eppler v. Tarmac America*, 752 So.2d 592, 594 (Fla. 2000):

"The presumption will entitle the Plaintiff, lead vehicle, to a directed verdict where the Defendant, following vehicle, is unable to provide a reasonable explanation for the collision. Thus the issue which the presumption bears is the causal negligence of the following vehicle. We cannot accept Chadbourne's apparent assertion that the trial court was legally bound to attribute 100% of the negligence to the driver of the rear vehicle," *Chadbourne*, supra at page 1024.

"Today, when a rear driver sues a lead driver for damages from a rear-end

collision, and the lead driver answers with an affirmative defense of comparative negligence, the rule will, at most, establish as a matter of law that the driver of the rear car is liable for some portion of the overall damages. There is no logic in blindly applying the rear-end collision rule to determine the rear driver automatically to be the sole source of negligence in all rear-end collisions. If it is sufficiently demonstrated that the lead driver was negligent as well, the jury should pass upon the question of shared liability and apportionment of damages," *Jefferies* supra at page 371.

Petitioner therefore requests the Florida Supreme Court to accept jurisdiction of this appeal, in order to resolve the conflict between the decision of the Fourth District in this case at hand, and the opinions of the First and Fifth District Courts of Appeal, and to set forth a correct statement of the law for the guidance of future litigants and the lower courts.

CONCLUSION

The decision of the Fourth District conflicts with opinions issued by the Florida Supreme Court, the First District Court of Appeal and the Fifth District Court of Appeal. The Supreme Court should therefore accept jurisdiction pursuant to Rule 9.030(2)(vi), based on the direct conflict created by the opinion issued by

the Fourth District in this case.

Respectfully submitted,

SEAMAN & COVEN, P.A.

_____

By: Allen R. Seaman
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail this 9th day of DecemberDecember, 2009, to:

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CERTIFICATE OF COMPLIANCE

I, the undersigned attorney, hereby certify that this Petition complies with Rule 9.210, Rules of Appellate Procedure, and that the foregoing Petition has utilized Times New Roman, 14 point font, with margins of no less than one inch.

I further certify that Petitioner's Jurisdictional Brief will be electronically filed with the Clerk of the Court, Supreme Court of Florida, at e-file@flcourts.org in MS Word format on the 9th day of December, 2009.

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COPY OF DISTRICT COURT'S OPINION