

**SUPREME COURT
STATE OF FLORIDA**

Case No. SC10-2459

L.T. Case No. 1D10-1046, 09-CA-3590 (ALACHUA COUNTY)

JULIE WINSLOW,

Plaintiff/Petitioner,

vs.

SCHOOL BOARD OF ALACHUA COUNTY,

Defendant/Respondent.

**JURISDICTIONAL BRIEF OF PLAINTIFF/PETITIONER JULIE
WINSLOW**

**ON APPEAL FROM THE FIRST DISTRICT COURT of APPEALS,
FLORIDA**

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NOTE ON REFERENCES TO THE PARTIES AND THE APPENDIX

The following references are used in the reply brief: Petitioner/Plaintiff, Julie Winslow, is referred to as "Winslow"; her daughter, Tiffany Chancey, is referred to as "Chancey."

Appellee/Defendant, School Board of Alachua County, is referred to as "SBAC".

In the Appendix is a conformed copy of the decision of the district court. References to the Appendix will be by "A,___." The appropriate page number(s) will follow the upper case A.

BRIEF STATEMENT OF CASE & FACTS

Julie Winslow's (Winslow) minor student, Tiffany Chancey (Chancey), was seriously injured while awaiting the arrival of the school bus at her designated school bus stop. As designed by the School Board of Alachua County (SBAC), the school bus stop consisted of two gathering areas, located on opposite sides of the roadway (south and north gathering areas). The SBAC designed the bus stop and enacted a rule to implement the design which required that students living on the south side of the road wait until the west bound school bus stopped and deployed its stop signs and flashing lights (thereby stopping all road traffic) before leaving the south gathering area and crossing the roadway to board the bus. Absent the stopped school bus, school children could not safely cross the roadway (there was no crosswalk or signal). Tragically, the bus driver never effectively communicated this sound and safe design to the students, and on virtually everyday the students living on the south side crossed the roadway from the south to the north gathering area before the school bus arrived. On the day she was injured, Ms. Chancey had crossed from the south to the north gathering area and was struck when she stepped into the roadway (apparently to see a student not yet at the stop).

Similar to virtually all school bus stops, the bus stop where Ms. Chancey was injured was not continually supervised or monitored by an SBAC employee.

Nonetheless, the SBAC exercised control over the students by enacting a bus stop crossing/boarding rule (which prohibited students from crossing and boarding until the bus stopped and stopped all other traffic). Compliance with the rule was monitored by the school bus driver who knew which students lived on either side of the road. Enforcement was initially the responsibility of the school bus driver, but (should the driver be unsuccessful in enforcing the rule) backed up by the school principal and ultimately the superintendent.

The above facts are taken from Winslow's second amended complaint, which was dismissed, with prejudice, by the trial court, because the court found SBAC did not have "physical custody" of Ms. Chancey at the time she was injured. The First District affirmed finding that even though the injury occurred at the bus stop, the SBAC did not have "control" over Ms. Chancey at the time of the accident, and therefore owed her no duty.

In her second amended the complaint Winslow specifically plead that the SBAC had **control** over Ms. Chancey because it had the **authority to control** (or regulate through the boarding/crossing rule) the manner by which she **crossed the street and boarded the bus**; i.e., the SBAC had the **authority to implement** it's design of the bus stop by **enacting the crossing/boarding rule** and through its bus

driver it was able to communicate, monitor, and enforce the rule, on a daily basis.

SUMMARY OF ARGUMENT

Plaintiff, Julie Winslow (Winslow), petitions the Supreme Court to exercise its discretionary jurisdiction on the grounds that the decision of the First District Court of Appeal directly conflicts with this Court's decisions in *Rupp v. Bryant*, 417 So.2d 658 (Fla. 1983); *Commercial Carrier Corporation v. Indian River County*, 371 So.2d 1010 (Fla. 1979); *Harrison v. Escambia County School Board*, 434 So.2d 316 (Fla. 1983); and with the decision of the Fourth District Court of Appeal in *School Board of Broward County v. Surette*, 394 So.2d 147 (Fla. 4th DCA), *review dismissed*, 399 So.2d 1146 (Fla. 1981).

Winslow's daughter was injured while at a designated school bus stop. Winslow alleged the SBAC exercised control over how and when Chancey crossed the street and boarded the bus through enactment of the crossing/boarding rule. Chancey was injured as a direct result of the SBAC's failure to effectively communicate, monitor, and enforce the crossing/boarding rule. Without explanation, the First District held that even though Chancey was injured at a bus stop the SBAC did not have control over her and owed her no duty.

The decision of the First District Court of Appeal directly conflicts with: *Surette*, 394 So.2d 147 where the court held that the school board owed a duty to a student at a bus stop who was struck and killed by a car, even though no school board employee was present at the time; *Harrison* 434 So.2d at, 319 n. 4, where this Court distinguished *Surette* only because the accident in *Surette* occurred at a designated bus stop (the holding in *Harrison* was that a school board owes no duty to a student in route to a bus stop); *Rupp* 417 So.2d at 666-668 where this Court held that a school board owes a duty to protect students to the extent that it has the authority to control their behavior; *Commercial Carrier*, 371 So.2d 1010 where this Court held that by enacting § 768.28 Fla. Stat., Florida waived sovereign immunity for “operational” functions or decisions (such as regulating the use of a school bus stop by students subject to the school boards authority and control), but not for certain “planning level” decisions (such as selecting the location or design of a bus stop).

ARGUMENT

In *Surette*, 394 So. 2d 147 a mother bought a claim against the school board seeking damages for the death of her thirteen-year-old child, struck and killed by a car while waiting at a designated school bus stop (like Chancey at the time she was struck, she was in the roadway). The child's mother alleged that the school bus

stop was so cluttered that children were forced to stand in the roadway. The *Surette* court held that the school board owed a duty to a student at a designated school bus stop, and that the record supported the claim that the bus stop was maintained in an unsafe condition. Here, Ms. Chancey was injured while at a designated school bus stop, due to the operational failure of the school board to effectively communicate, monitor and enforce its own crossing/boarding rule, which the SBAC enacted pursuant to its authority to control how its students boarded the bus.

In *Harrison*, 434 So.2d 316, a father brought suit against a school board seeking damages for the death of his 11 year old child who was struck by a car while **en route to** an allegedly negligently located school bus stop. The father argued safer locations were available, the location selected was dangerous and a warning sign should have been installed. In contrast, in the instant case Winslow did not argue that the SBAC was negligent in designating the bus stop, or that the SBAC created a known dangerous condition about which it had a duty to warn; rather, Winslow argued that the SBAC negligently operated the bus stop by failing to communicate, monitor, or enforce the crossing/boarding rule it had enacted to implement the bus stop's design, pursuant to its authority to control student behavior.

At the commencement of its legal discussion, the *Harrison* court stated "to start, we note that the accident did not happen at the school bus stop." (The *Harrison* court also differentiated *Surette*, noting that in *Surette* the injury occurred at the designated school bus stop.) Unfortunately and somewhat confusingly, the *Harrison* court also stated "a school board's control over its students regarding transportation extends from when a school bus picks up a student at a bus stop to the school door." Relying on this statement, the trial court held "a school board's duty of care begins when the school board has physical custody," and the First District held that "the School Board did not have control over this student." Thus, both courts relied on language in *Harrison*, which directly conflicts with the other language in *Harrison*. The **holding** in *Harrison* was only that a school board does not owe a duty to a student **en route** to a bus stop (which is not the issue here).

As the First District was affirming the dismissal, with prejudice, of Winslow's Second Amended Complaint, which specifically alleged that the school board had control over Ms. Chancey, its decision can only be interpreted as holding that, as a matter of law, a school board has no "control" over students even when the students are at (and not simply en route to) a designated school bus stop. Thus, the First District's ruling directly conflicts with the *Harrison* court's endorsement of the *Surette* decision, which the *Harrison* court differentiated solely

on the basis that the student in *Surette* was injured while at, rather than en route to, the school bus stop. Therefore, a significant benefit of the of this Court's decision to exercise its discretionary jurisdiction would include the opportunity to clarify the *Harrison* decision for the benefit of school boards, parents and students across Florida.

In *Rupp*, 417 So.2d 658, the school board was sued for injuries sustained by a student at an initiation ceremony for a school club. The injury occurred off the school premises and outside school hours, when no school employee was present. The student alleged that: the school sanctioned club had a reputation for conducting activities which violated school board regulations; the club was required to obtain the principal's approval for extracurricular outings; it was prohibited by school regulation from hazing; a teacher was assigned as faculty advisor, and that the teacher's presence was required at all club activities.

This Court found that the school board owed a duty to the student because the school board had the authority to control the behavior of the students, and that the fact that the meeting was held off school premises did not affect the authority and correlative duty to control the meeting. *Id* at 667. Thus, the First District's opinion in *Winslow* finding that the SBAC had no "control" over Ms. Chancey while she was at the bus stop, despite the fact that it had the authority to implement

crossing/boarding procedures (and the ability to monitor and enforce compliance with those procedures) directly conflicts with this Court's decision in *Rupp* holding that where the school board has the authority to control student behavior, it has a corresponding duty to take reasonable steps to exercise control.

In the landmark *Commercial Carrier*, 371 So.2d 1010 decision, this Court determined the scope of the statutory waiver of sovereign immunity. The claim in *Commercial Carrier* arose out of a collision occurring at an unmarked intersection where there had previously been a stop sign and pavement markings. The complaint alleged that Indian River County negligently failed to maintain the stop sign at the intersection and that the Florida DOT negligently failed to paint or replace the word "STOP."

This Court examined the holdings of several foreign courts and adopted an analysis which distinguished between "planning level" and "operational level" decisions. "Planning level" decisions are generally interpreted to be those requiring basic policy considerations, while "operational level" decisions are those that implement policy. *Id* at 1021. Thus, this Court held that the initial decision to install traffic control devices is a planning level decision; however, the duty to maintain the devices is "operational."

In the instant case, the decision to locate a bus stop to be serviced by a westbound bus only, thereby requiring students on the south side of the street to cross to the north side before boarding the bus was a “planning level” decision. Furthermore, the design implemented by the SBAC which included two gathering areas and required that students living on the south side of the roadway remain at the south gathering area until the school bus stopped, involved at least some policy considerations. On the other hand, the duty to effectively communicate, monitor, and enforce the crossing/boarding rule, is indisputably “operational.” The failure to effectively communicate, monitor, and enforce a rule adopted to implement the bus stop design, and control the manner by which the students boarded the bus is undeniably an “operational” failure.

There are literally thousands of school bus stops in Florida. If school boards owe no duty to students at school bus stops, students and their parents have a right to know that. On the other hand, if school boards have authority and control over students at school bus stops, then school boards must be held accountable for failing to exercise their authority and control in order to provide for the safety of their students.

CONCLUSION

The decision of the First District Court of Appeal directly conflicts with: *Surette* and *Harrison* which hold that school boards owe a duty to students **at bus stops**; *Rupp* which holds that school boards owe a duty to students correlative to their authority to control students' behavior; *Commercial Carrier*, which holds that sovereign immunity is waived with respect to "operational" actions. Wherefore, Plaintiff/Petitioner, Winslow, requests that this Court invoke its discretionary jurisdiction and review the decision of the First District Court of Appeal contained in the Appendix.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by facsimile, 352-376-7415 and by U.S. Mail to David M. Delaney, Esquire and Elizabeth S. McKillop, Esquire, Dell Graham, P.O. Box 850, Gainesville, FL 32601, this 24th day of January, 2011.

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CERTIFICATE OF COMPLIANCE

In accordance with Rule 9.210(a)(2), Florida Rules of Appellate Procedure, Plaintiff/Appellant has used 14 point times New Roman throughout this Jurisdictional Brief.

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