IN THE SUPREME COURT OF FLORIDA

TALLAHASSEE, FLORIDA

SHANDALYN SANDERS, as Personal Representative of the Estates of CLARA SANDERS, deceased, and CHAUNCEY SANDERS, deceased,

Petitioner,

-vs-

CASE NO. SC12-2416

ERP OPERATING LIMITED PARTNERSHIP, a foreign limited partnership, d/b/a GATEHOUSE ON THE GREEN APARTMENTS,

Respondent.
_____/

BRIEF OF PETITIONER ON JURISDICTION

On appeal from the Fourth District Court of Appeal of the State of Florida

LAW OFFICE OF JEFFREY L. ALLEN, P.A.
19 West Flagler Street, #209
Miami, FL 33130
and
THADDEUS HAMILTON, P.A.
4330 West Broward Blvd., Ste. J
Plantation, FL 33317
and
BURLINGTON & ROCKENBACH, P.A.
Courthouse Commons/Suite 430
444 West Railroad Avenue
West Palm Beach, FL 33401
(561) 721-0400
Attorneys for Petitioner
pmb@FLAppellateLaw.com
lab@FLAppellateLaw.com

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	iii
PREFACE	iv
STATEMENT OF THE CASE AND FACTS	1-3
SUMMARY OF ARGUMENT	3-4
ARGUMENT	4-10
THE DECISION OF THE FOURTH DISTRICT EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND DECISIONS OF OTHER DISTRICT COURTS REGARDING THE PRINCIPLES GOVERNING THE DETERMINATION OF CAUSATION IN NEGLIGENCE CASES.	
CONCLUSION	10
CERTIFICATE OF SERVICE	11
CERTIFICATE OF TYPE SIZE & STYLE	12

TABLE OF AUTHORITIES

	PAGE
Cases	
Brown v. Motel 6 Operating, L.P., 989 So.2d 658 (Fla. 4th DCA 2008)	8, 9
Brown v. Motel 6 Operating, L.P., Ltd., 1 So.3d 171 (Fla. 2009)	8
Cox v. St. Joseph's Hospital, 71 So.3d 795 (Fla. 2011)	5, 7
Dep't of Transportation v. Anglin, 502 So.2d 896 (Fla. 1987)	6
Etheredge v. Walt Disney World Co., 999 So.2d 669 (Fla. 5th DCA 2009)	5
Fund v. Hotel Lenox of Boston, Inc., 635 N.E.2d 1189 (Mass. 1994)	9
Helman v. Seaport Coastline Railroad Co., 349 So.2d 1187 (Fla. 1977)	6
Nunez v. Lee County, 777 So.2d 1016 (Fla. 2d DCA 2000)	6
Pamperin v. Interlake Cos., Inc., 634 So.2d 1137 (Fla. 1st DCA 1994)	6
Regency Lake Apartments Associates Limited v. French, 590 So.2d 970 (Fla. 1st DCA 1991)	6
Sawyer v. Allied International Holdings, Inc., 707 So.2d 761 (Fla. 2d DCA 1998)	6
Stahl v. Metropolitan Dade County, 438 So.2d 14 (Fla. 3d DCA 1983)	6
Other Authority	
Fla. Standard Jury Instruction 401.12	6

PREFACE

This is Petitioner's request for discretionary review of a decision of the Fourth District Court of Appeal dated July 18, 2012.

Petitioner, SHANDALYN SANDERS, will be referred to as "Petitioner" or "Sanders." Respondent, ERP OPERATING LIMITED PARTNERSHIP, a foreign limited partnership, d/b/a GATEHOUSE ON THE GREEN APARTMENTS, will be referred to as "Respondent" or "Gatehouse" respectively.

The following designation will be used:

(A) – Petitioner's Appendix

STATEMENT OF THE CASE AND FACTS

Plaintiff filed a negligent security action against the Defendant, which owned the apartment complex Gatehouse on the Green ("Gatehouse"), arising out of the murder of two young adults in an apartment on its property. Gatehouse was marketed as a "gated community," and it had a gated front entrance, although it was undisputed that the gate was inoperable for four months during the year of these murders, and that it had been broken for the two months immediately preceding these murders (A1, 2). The gate at the front entrance was a significant barrier, as water surrounded approximately 70% of the complex and a wall and fence surrounded the remainder (A1).

The Defendant is a national company owning approximately 100 such rental properties, and its manual provided that notice to residents should be provided when a "significant crime" occurs on the property (A2). However, there were twenty criminal incidents on the property in the three years prior to the murders, and it was undisputed that the Defendant did not send any notices to any residents regarding any of them (A2).

The Complaint alleged that Defendant was negligent in maintaining the premises in a reasonable and safe condition because it failed to "(1) maintain the front gate; (2) have adequate security; (3) prevent dangerous persons from gaining

access to the premises; and (4) protect and warn residents of dangerous conditions and criminal acts" (A2).

At trial Plaintiff offered the testimony of a criminology expert who testified that the pattern of crimes at Gatehouse in the three years prior to the murders were opportunistic in nature, and that such precursor crimes needed to be monitored, as Defendant's own training video acknowledged that they could be minimized through "awareness" (A3). While Plaintiff's expert acknowledged there was no way of knowing precisely how the murders took place, he testified that it appeared the murders occurred in the course of an opportunistic crime, such as a home invasion, since there was jewelry, cash, credit cards, and a computer modem stolen from the apartment where the murders occurred (A2).

The Defendant presented an expert who testified that the murders were not foreseeable and that since there were no signs of forced entry, it appeared that Plaintiff had opened the door to the person or persons who committed the crime (A3-4).[1] At trial, the court denied Defendant's Motion for Directed Verdict and the jury ultimately assessed 60% of fault to the decedents, and 40% of the

[1] Plaintiff presented additional evidence of Defendant's negligence with regard to security on the premises; however, the Fourth District did not address that evidence in its Opinion, apparently because it concluded that because there was no evidence of forcible entry the Plaintiff was unable, as a matter of law, to prove causation.

negligence to the Defendant; and it awarded a total of $4.5 million to the survivors of the two decedents.

Defendant appealed and the Fourth District reversed, concluding that the directed verdict should have been granted in Defendant's favor, and that "without proof of how the assailants gained entry into the apartment, the Plaintiffs simply could not prove causation" (A5). The Fourth District did not base its decision on a determination that the murders were unforeseeable, as a matter of law.

SUMMARY OF ARGUMENT

The Opinion of the Fourth District conflicts with decisions of this Court and other district courts of appeal on the principles governing the determination of proximate cause in a negligence action. The Fourth District reversed the trial court's denial of Defendant's Motion for Directed Verdict, and remanded for judgment in favor of the Defendant based solely on the circumstance that there was no evidence of forcible entry into the decedents' apartment. Based on that circumstance, the Fourth District determined, as a matter of law, that the Plaintiff could not prove that the Defendant's conduct was a proximate cause of the decedents' deaths. This is inconsistent with extensive case law in Florida that proximate cause is generally a question for the jury to be determined based on consideration of all the facts and circumstances of the case, and that it is rarely determinable as a matter of law. Here, the Fourth District determined, as a matter

of law, that Plaintiff could not prove proximate causation solely because there was no evidence of forced entry, even though a jury could reasonably determine that the Defendant's conduct more likely than not was a cause of the decedents' deaths. Therefore, this Court should accept jurisdiction to review the Fourth District's decision.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT EXPRESSLY AND DIRECTLY CONFLICTS WITH DECISIONS OF THIS COURT AND DECISIONS OF OTHER DISTRICT COURTS REGARDING THE PRINCIPLES GOVERNING THE DETERMINATION OF CAUSATION IN NEGLIGENCE CASES.

The Fourth District reversed the trial court's denial of Defendant's Motion for Directed Verdict on the issue of causation and remanded the case to the trial court for entry of judgment in favor of the Defendant. Essentially, the Fourth District held that since there was no evidence of forcible entry into the decedents' apartment, the Plaintiff was unable, as a matter of law, to satisfy her burden to prove that the Defendant's negligence was a proximate cause of the decedents' deaths. This is contrary to decisions of this Court and other district courts on the application of the directed verdict standard. More specifically, it is inconsistent with the principle that proximate cause is ordinarily a question of fact for the jury, to be determined based on all the facts and circumstances, and it should not be determined as a matter of law based on one isolated factual consideration.

It is important to emphasize that the Fourth District's decision found that there was sufficient evidence of negligence on the part of the Defendant, but determined that a directed verdict was compelled solely because there was no evidence of forcible entry into the apartment. It appears clear from case law that seizing upon one factual circumstance as justifying a determination of the causation issue as a matter of law is directly inconsistent with decisions of this Court and other district courts of appeal.

Recently, in Cox v. St. Joseph's Hospital, 71 So.3d 795, 801 (Fla. 2011), this Court reversed a district court's decision holding that the trial court should have granted a directed verdict on causation in a negligence (professional malpractice) case, stating:

> As our review of the case law illuminates, while a directed verdict is appropriate in cases where the plaintiff has failed to provide evidence that the negligent act more likely than not caused the injury, it is not appropriate in cases where there is conflicting evidence as to the causation or the likelihood of causation. If the plaintiff has presented evidence that could support a finding that the defendant more likely than not caused the injury, a directed verdict is improper.

Additionally, district courts in Florida have repeatedly held that directed verdict motions should be treated with special caution in negligence cases because the evidence supporting the elements of such claims are frequently subject to more than one interpretation. See Etheredge v. Walt Disney World Co., 999 So.2d 669, 671 (Fla. 5th DCA 2009); Nunez v. Lee County, 777 So.2d 1016 (Fla. 2d DCA

2000); Regency Lake Apartments Associates Limited v. French, 590 So.2d 970, 972 (Fla. 1st DCA 1991).

Moreover, this Court has long held that the question of whether a defendant's negligence was a proximate cause of plaintiff's injuries is generally one for the jury, Dep't of Transportation v. Anglin, 502 So.2d 896, 899 (Fla. 1987); Helman v. Seaport Coastline Railroad Co., 349 So.2d 1187, 1189 (Fla. 1977). The district courts are clearly in accord, Pamperin v. Interlake Cos., Inc., 634 So.2d 1137, 1139 (Fla. 1st DCA 1994) ("The circumstances under which a court may resolve the question of proximate cause as a matter law are extremely limited."); Sawyer v. Allied International Holdings, Inc., 707 So.2d 761, 763 (Fla. 2d DCA 1998) ("proximate cause questions generally must be resolved by the trier of fact based on all the facts and circumstances presented"). The Fourth District's decision violates those principles by determining the issue of proximate cause as a matter of law based on one factual element of the case; that is, that there was no evidence of forced entry into the decedents' apartment by the assailants who murdered them.

Of course, there can be more than one cause of a plaintiff's injuries or death, see, Stahl v. Metropolitan Dade County, 438 So.2d 14, 18-22 (Fla. 3d DCA 1983); see also, Fla. Standard Jury Instruction 401.12. All that is necessary for a plaintiff to overcome a motion for directed verdict is to present evidence that the defendant

more likely than not was a proximate cause of the plaintiff's injury or death, Cox v. St. Joseph's Hospital, supra 71 So.3d at 801.

Here, the Fourth District noted that there were twenty criminal incidents on the premises in the three years prior to these murders, and that despite its internal policies, the Defendant did not provide any notice to any of the residents of any of those criminal incidents. Clearly, the failure to notify residents of a dangerous condition on the premises can, in itself, be a proximate cause of injuries or deaths under these circumstances. More specifically, a jury could reasonably conclude that a resident's decision whether to open their apartment door to someone without engaging in significant scrutiny is influenced by whether they are aware that they live in a dangerous area. Since the Defendant here did not inform the residents of any of the twenty crimes which occurred on the premises in the preceding three years, the decedents may have believed they lived in a safe area and, as a result, were somewhat lax in opening their door to strangers (as apparently the jury found). Those circumstances do not justify a conclusion that the Defendant's negligence was not, as a matter of law, a proximate cause of the decedents' deaths.

Additionally, the failure to maintain the front gate and permitting it to be broken for a significant period prior to the murders was also a circumstance from which the jury could reasonably find that the Defendant's conduct was a proximate cause of decedents' death. As Plaintiff's expert testified, most of the twenty

precursor crimes were opportunistic in nature, and the fact that personal property and cash was stolen from the decedents' apartment created a reasonable inference that these murders resulted from an opportunistic crime. Testimony was presented that such opportunistic crimes can be minimized through awareness and preventive measures, which the Defendant here negligently failed to undertake.

Based solely on the facts discussed above,[2] it should be clear that the Plaintiff presented sufficient evidence that it was more likely than not that the Defendant was a proximate cause of the decedents' death. Of course, that does not mean Defendant's conduct was the only cause of the decedents' death. In fact, the jury apportioned the fault between the decedents and the Defendant, determining that the decedents were 60% responsible, presumably for opening their door without engaging in sufficient scrutiny of the people seeking entry.

The Fourth District concluded that it was bound by its prior decision in Brown v. Motel 6 Operating, L.P., 989 So.2d 658 (Fla. 4th DCA 2008), but that case involved clearly distinguishable facts (even assuming arguendo, Brown was properly decided).[3] In Brown, a customer was murdered in a motel room and there

---

[2] There was additional evidence regarding the Defendant's negligent conduct with respect to security measures which is not mentioned in the Fourth District opinion.

[3] It should be noted that the plaintiff in Brown sought discretionary review in this Court (ironically, represented by Defendant's appellate counsel in the case sub judice), and this Court denied that petition for review, Brown v. Motel 6 Operating, L.P., Ltd., 1 So.3d 171 (Fla. 2009)(Table). However, the plaintiff in that case

was no evidence of forcible entry. However, the motel had a security guard present on the night of the incident, there were also surveillance cameras on the premises, and there were significantly fewer prior criminal acts. Additionally, there was no evidence in Brown of any property crime associated with the decedent's death.

Thus, neither Brown, nor general negligence principles justify the conclusion that the lack of forcible entry here should compel a directed verdict on causation. The Massachusetts Supreme Court applied the appropriate analysis in Fund v. Hotel Lenox of Boston, Inc., 635 N.E.2d 1189 (Mass. 1994). In that case, the plaintiff's decedent was murdered in a hotel room, but there were no signs of forcible entry. Nonetheless, the Massachusetts Supreme Court ruled that fact did not preclude plaintiff from prevailing on the issue of causation because the circumstances indicated that the likelihood the assailant was a hotel guest or the decedent's visitor was "not great." The Court reasoned as follows:

> The absence of reasonably adequate means of detecting intruders and the hotel's failure to control and monitor intruders' means of access to and egress from the hotel indicate that the risk of harm from an intruder was enhanced by the hotel's negligent omissions. That risk was sufficiently great that the less plausible possibility, that the assailant was a guest or some other person authorized to be in the hotel, should not bar the plaintiff from submitting his case to a trier of fact.

---

claimed decisional conflict with a completely different set of cases than are argued herein, relying solely on cases addressing the forseeability of criminal acts.

That analysis, which was based on the same common law tort principles which should have been applied here, demonstrates the error in the Fourth District's reasoning.

In summary, the opinion of the Fourth District conflicts with decisions of this Court and other district courts of appeal regarding the application of the directed verdict standard in negligence cases, particularly with respect to the issue of proximate causation. The Fourth District determined the causation issue, as a matter of law, based on one factual aspect of the case, i.e., the lack of forcible entry into the decedents' apartment. However, that fact in itself cannot exonerate the Defendant of the consequences of its negligence. The lack of forcible entry could not prevent the jury from reasonably concluding that the Defendant's negligent conduct, with respect to the security on the premises and the lack of warnings to the decedents, more likely than not was a proximate cause of the decedents' death. Therefore, this Court should accept jurisdiction in this case.

CONCLUSION

For the reasons stated above, this Court should accept jurisdiction in this case based on the determination that the Fourth District's opinion expressly and directly conflicts with decisions of this Court and other district courts on the issue of the determination of proximate cause in negligence cases.

CERTIFICATE OF SERVICE

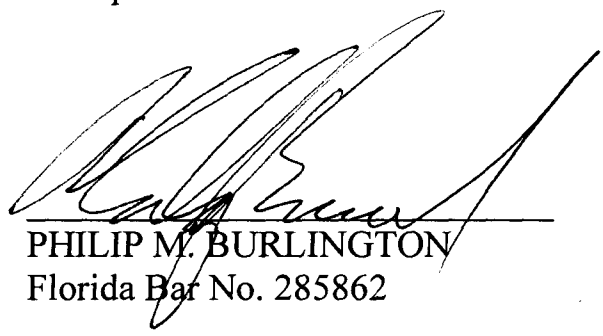
I HEREBY CERTIFY a true copy of the foregoing was furnished to RICHARD A. SHERMAN, ESQ. (rsherman@appealsherman.com), 1777 South Andrews Ave., Ste. 302, Ft. Lauderdale, FL 33316; JOEL R. WOLPE, ESQ. (jwolpe@wlaf-law.com), 44 W. Flagler St., Penthouse, Miami, FL 33130; JEFFREY L. ALLEN, ESQ. (allenesq@bellsouth.net), 19 W. Flagler St., Ste. 209, Miami, FL 33130; MATTHEW D. LEVY, ESQ.(mattlevy@metnickandlevy.com), 15300 Jog Road, Ste. 103, Delray Beach, FL 33446, by email, on January 14, 2013.

Jeffrey L. Allen, Esq.
LAW OFFICE OF JEFFREY L. ALLEN, P.A.
19 West Flagler Street, #209
Miami, FL 33130
and
Thaddeus Hamilton, Esq.
THADDEUS HAMILTON, P.A.
4330 West Broward Blvd., Ste. J
Plantation, FL 33317
and
BURLINGTON & ROCKENBACH, P.A.
Courthouse Commons/Suite 430
444 West Railroad Avenue
West Palm Beach, FL 33401
(561) 721-0400
Attorneys for Petitioner
pmb@FLAppellateLaw.com
lab@FLAppellateLaw.com

By: _____
PHILIP M. BURLINGTON
Florida Bar No. 285862

CERTIFICATE OF TYPE SIZE & STYLE

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



PHILIP M. BURLINGTON
Florida Bar No. 285862