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IN THE SUPREME COURT OF FLORIDA

ABEL LIMONES, SR. and
SANJUANA CASTILLO, individually
and as natural parents and next friends
of ABEL LIMONES, JR.,

Appellants,

v.

FSC CASE NO. SC13-932
2d DCA CASE NO. 2D11-5191

SCHOOL DISTRICT OF LEE
COUNTY and SCHOOL BOARD OF
LEE COUNTY,

Appellees.

_____/

Discretionary Proceedings to Review a Decision by the
Second District Court of Appeal, State of Florida

RESPONDENTS' BRIEF IN OPPOSITION TO JURISDICTION

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PRELIMINARY STATEMENT

Respondents, SCHOOL DISTRICT OF LEE COUNTY and SCHOOL BOARD OF LEE COUNTY , shall refer to themselves collectively as the School Board, Respondent, or Defendant. Petitioners concede, and the School Board agrees, that the only proper Defendant is the School Board of Lee County. App. 2, n.1.

Respondent shall refer to Petitioners, SANJUANA CASTILLO, ABEL LIMONES, SR., and ABEL LIMONES, JR., individually as SANJUANA CASTILLO, ABEL LIMONES, SR., and ABEL, respectively, and shall refer to them collectively as Petitioners or Plaintiffs.

Respondent shall refer to the Second District's decision, *Limonos v. School District of Lee County*, Case No. 2D11-5191 (Fla. 2d DCA 2013), as *Limonos*.

Citations to the Second District's decision, which is attached as an Appendix to this Brief, shall be noted as "App." followed by the relevant page number.

Citations to Petitioners' Brief on Jurisdiction shall be noted as "Pet. Br." followed by the relevant page number.

Citations to Florida Statutes shall be to the 2008 version, unless otherwise noted.

STATEMENT OF THE CASE AND FACTS

Petitioners seek review of the unanimous decision of the Second District Court of Appeal attached as an Appendix to Respondents' Brief. The following facts are taken from the face of the Second District's decision.

The Petitioners, Abel Limones, Sr. and Sanjuana Castillo, on behalf of their teenage son, Abel Limones, Jr., appealed the final summary judgment entered in favor of the School Board. App. 1-2. The underlying case involved a severe brain

injury that occurred after Abel, a high school athlete, collapsed on the field during a high school soccer game. App. 2. Within three minutes of the collapse, an assistant principal called 9-1-1. Id. When he stopped breathing, the soccer coach and a nurse bystander performed CPR. Id. An automated external defibrillator ("AED") was located on a golf cart parked near the soccer field's end zone. App. 3. Although Abel's soccer coach stated that he called for an AED, no one else, including the bystander nurse who was performing CPR with the soccer coach, heard anyone call for an AED. Id. The coach and nurse performed CPR until the first responders arrived and took over. App. 2-3 Abel was not resuscitated until emergency medical personnel used a semi-automatic defibrillator and administered a series of intravenous medications to Abel. Id.

Abel Limones, Sr. and Sanjuana Castillo sued the School Board, claiming that it was negligent in failing to maintain an AED on or near the soccer field, to make it available for use, or in failing to actually use an AED on Abel. Id. Petitioners asserted a general negligence claim against the School Board based on its common law duty to provide a reasonably safe environment for Abel. App. 3. Petitioners also asserted a negligence claim based on the School Board's failure to adhere to the terms of section 1006.165, Florida Statutes (2008), which governs AED requirements at certain public schools. Id. The trial court granted summary judgment based upon its conclusion that there was no common law duty to make

available, diagnose the need for, or use an AED and that section 1006.165 likewise did not establish a cause of action for negligence. App. 3-4. The trial court also concluded that, even if there was such a duty, the School Board was entitled to immunity under the Cardiac Arrest Survival Act. App. 4.

On appeal, the Second District, recognizing that the case presented an issue of first impression, held that the School Board's common law duty to use appropriate post-injury efforts to protect Abel's injury against aggravation did not include a duty to maintain, make available, or use an AED. App. 5, 12. The court below acknowledged that a school board owes a general duty to adequately supervise its students, which in the context of athletic activities, includes a duty to utilize appropriate post-injury efforts to protect the injury against aggravation. App. 4. However, the appellate court determined that the scope of the School Board's duty did not include the duty to make available, diagnose the need for, or use an AED on Abel. App. 7. In reaching this holding, the Second District analogized to the Fourth District's decision in L.A. Fitness Int'l, LLC v. Mayer, which held that a business owner does not have a common law duty to provide CPR or to maintain or use an AED when a business invitee collapses. App. 5 (citing L.A. Fitness Int'l, LLC v. Mayer, 980 So. 2d 550 (4th DCA 2008), *rev. denied*, 1 So. 3d 172 (Fla. 2009)).

Petitioners argued to the Second District, and continue to maintain in these proceedings, that the School Board's general duty to utilize appropriate post-injury efforts to protect an injury against aggravation imposed an all-encompassing duty to have made available, diagnosed the need for, and used an AED on Abel. Pet. Br. 2-3, 6-9. The Second District rejected Petitioners' argument by cautioning that the duty of care owed by a school board to a student athlete was not a stagnant proposition but was based upon the specific facts of each case:

But we caution that the existence of a duty to utilize appropriate post-injury efforts is not necessarily the same for all high school sports or athletes and is definitely not a stagnant proposition.

App. 7. Thus based upon the facts of this case and the state of the law in Florida, the Second District held that the scope of the School Board's duty to utilize appropriate post-injury efforts did not include a duty to maintain, make available, or use an AED. App. 12.

In addition to this holding, the Second District further held that

[T]he School Board did not voluntarily undertake the duty to use an AED by acquiring one and providing training on its use and as required by section 1006.165. And neither the Good Samaritan Act nor the Cardiac Arrest Survival Act sets forth a duty to use an AED. Finally, even if there had been such a duty, the School Board would have been entitled to immunity from civil liability under the Cardiac Arrest Survival Act because under the terms of that Act, it acquired an AED and made it available for use by having it in the end zone of the soccer field.

App. 12.

Importantly, the final summary judgment entered by the trial court could have been affirmed by the Second District based upon either of two findings: (1) that the School Board's duty of care did not include a duty to use an AED on Abel; or (2) that the Cardiac Arrest Survival Act provided immunity to the School Board. The Second District properly found in favor of the School Board as to both of these dispositive grounds and, thus, affirmed the final summary judgment in favor of the School Board. App. 12. The Petitioners do not assert any basis for this Court's jurisdiction with respect to the Second District's decision that the Cardiac Arrest Survival Act provided complete immunity to the School Board in this lawsuit.

SUMMARY OF THE ARGUMENT

This Court does not have jurisdiction to review the decision below because it does not expressly or directly conflict with this Court's or other district courts' decisions on the same question of law, as required in order for this Court to accept jurisdiction. *See* Art. V § 3(b)(3), Fla. Const.; Fla. R. App. P. 9.030(a)(2)(iv). *Limonas* is in accord with the case law of this State which requires courts to determine the scope of a defendant's legal duty, as a matter of law.

ARGUMENT

No Jurisdiction Exists Because *Limones* Does Not Expressly and Directly Conflict with This Court's Established Law as to the Elements of a Negligence Claim.

Petitioners argue that *Limones* directly and expressly conflicts with "existing Florida law as to the elements of a negligence claim and which are to be decided by the courts and by juries." Pet. Br. 10. Petitioners generally cite to *McCain v. Fla. Power Corp.*, 593 So. 2d 500 (Fla. 1992), *Whitt v. Silverman*, 788 So. 2d 210 (Fla. 2001), and *U.S. v. Stevens*, 994 So. 2d 1062 (Fla. 2008), as the basis for conflicts jurisdiction. Contrary to Petitioners' claim, no direct and express conflict exists between *Limones* and *McCain*, *Whitt*, or *Stevens* on the same rule of law; *Limones* is completely in accord with this Court's precedent.¹ Thus, this Court lacks jurisdiction to review the decision below because it does not expressly or directly conflict with this Court's or other district courts' decisions on the same question of law, as required by Article V § 3(b)(3) of the Florida Constitution and Rule 9.030(a)(2)(iv), Florida Rules of Appellate Procedure.

¹ Petitioners do not argue that *Limones* involves substantially the same controlling facts as a prior case ruled upon by Florida courts, and the Second District identified that the issue of a school board's duty to make available, diagnose the need for, or use an AED on a student-athlete was an issue of first impression in Florida. See App. 5. Thus, the focus here is on the first situation addressed in *Nielson v. City of Sarasota*, 117 So. 2d 731 (Fla. 1960), i.e. whether *Limones* involved a rule of law which conflicts with a rule previously announced by this Court.

Petitioners contend that the Second District's determination as to the "scope and extent" of the School Board's duty expressly and directly conflicts with existing Florida law because it improperly added "another prong" to the court's determination of the threshold issue of duty. Pet. Br. 7. Petitioners further contend that by determining the scope of the School Board's duty, the Second District improperly crossed into the jury question as to breach. App. 4-8. Petitioners' arguments as to express and direct conflict should be rejected by this Court because they are based upon an improper characterization of Florida law regarding a court's determination of a defendant's legal duty.

Contrary to Petitioners' assertions, existing Florida law, including this Court's decisions in *McCain* and its progeny, mandate that Florida courts determine the scope of a defendant's duty, as a matter of law. See McCain, 593 So. 2d at 503 ("Foreseeability clearly is crucial in defining the scope of the general duty placed on every person to avoid negligent acts or omissions."); Whitt, 788 So. 2d at 217; Stevens, 994 So. 2d at 1066-68; see also L.A. Fitness, 980 So. 2d at 562 (holding that the scope of a health club owner's duty does not include a duty to provide CPR or maintain or use an AED when a business invitee collapses while exercising at the health club). As explained by this Court in *McCain*, every person has a general duty to avoid negligent acts or omissions. 593 So. 2d at 503. However, this general duty does not transcend to a defendant owing a legal duty in

every case to every person under every possible set of facts and circumstances. For this reason, Florida law requires courts to assess the facts and/or legal authorities relevant to each case to determine whether a legal duty exists with respect to that individual case. See McCain, 593 So. 2d at 503, n. 2.

Petitioners advocate for a "stagnant proposition" as to the School Board's legal duty which completely ignores the specific facts of each case—such position is not in accord with existing Florida law or *McCain* and its progeny. This is precisely what the Second District cautioned against when it stated, "the existence of a duty to utilize appropriate post-injury efforts is not necessarily the same for all high school sports or athletes and is definitely not a stagnant proposition." App. 7. Under Appellants' flawed analysis, a School Board would owe a legal duty to each and every student-athlete to utilize any and all possible measures to protect student-athletes from injury. This analysis is contrary to the law and precedent of this State, which mandates that courts assess and determine the scope of a defendant's legal duty, as a matter of law. See McCain, 593 So. 2d at 503; Whitt, 788 So. 2d at 217; Stevens, 994 So. 2d at 1066-68; see also L.A. Fitness, 980 So. 2d at 562.

For these reasons, *Limonas* is in accord with the established law of this State, and this Court lacks jurisdiction under Article V § 3(b)(3) of the Florida Constitution and Rule 9.030(a)(2)(iv), Florida Rules of Appellate Procedure.

Even if this Court believes that an express and direct conflict may exist, this Court should exercise its discretion to decline review because this decision was rendered based upon the specific and unique facts of the case; the decision does not involve a broad legal issue or sweeping policy question. App. 7 (cautioning that the existence of a legal duty to utilize appropriate post-injury efforts is not the same for all high school sports or athletes). Moreover, the Second District upheld the final summary judgment on two distinct grounds: (1) that the School Board did not owe a legal duty to use an AED; and (2) that the School Board was entitled to immunity under the Cardiac Arrest Survival Act. Contrary to Petitioners' argument contained in a footnote of their Brief, the plain language of the Cardiac Arrest Survival Act provides immunity to the School Board because it made an AED available for use by having it in the end zone of the soccer field. App. 11-12 (citing Fla. Stat. § 768.1325(3)). Thus, even if Petitioners were to prevail on the issue of legal duty, the result in this case remains the same. For these reasons, this Court should exercise its discretion to decline review of this matter.

CONCLUSION

Based on the foregoing, this Court should deny jurisdiction.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been furnished by regular mail to:

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Brief complies with Florida Rule of Appellate Procedure 9.210, and has been typed in Times New Roman, 14 point..

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