Filing # 17479427 Electronically Filed 08/25/2014 03:07:36 PM

RECEIVED, 8/25/2014 15:08:43, John A. Tomasino, Clerk, Supreme Court

IN THE SUPREME COURT OF FLORIDA

CASE NO.: SC14-1629
L.T. CASE NO.: 3D12-1338

RODOLFO VALLADARES,

Petitioner,

v.

BANK OF AMERICA CORPORATION, a Delaware corporation,

Respondent.
_____/

PETITIONER'S BRIEF ON JURISDICTION

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I.
STATEMENT OF THE CASE AND FACTS

This Court's jurisdiction is invoked here on the basis of both the District Court's acknowledgment of express and direct conflict with the decision of another District Court of Appeal, and an additional holding that directly and expressly conflicts with a decision of this Court. The decision at issue is reported as *Bank of America Corp. v. Valladares*, 141 So. 3d 714 (Fla. 3d DCA 2014) (App.).

As the District Court's Opinion states, Plaintiff/Petitioner Rodolfo Valladares sued Defendant/Respondent Bank of America Corporation (hereinafter "the Bank") "for personal injuries he suffered at the hands of the police when the Bank mistakenly reported Valladares to be a bank robber. The jury returned a verdict for Valladares finding that the Bank was negligent" (App. 2). As the decision notes, the jury also found that the Bank was liable for punitive damages--that is, that the Bank had acted in an intentional, wanton, wilful or reckless way (App. 2-3).

Notwithstanding this finding, in reliance upon *Pokorny v. First Federal Savings & Loan Ass'n of Largo*, 382 So. 2d 678 (Fla. 1980), the District Court held that the Bank was entitled to a directed verdict, because "a person who reports a suspected crime to the police has a qualified privilege: the person making the report cannot be liable if the report is based upon a good faith mistake. In other words, the

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person making the report cannot be liable unless he acted maliciously" (App. 5-6). However, the District Court did not address the specific language of the quoted passage from *Pokorny*, which concerned only a claim of malicious prosecution, which this Court defined as detaining the plaintiff or swearing out an arrest warrant. The District Court also did not address the Plaintiff's award of punitive damages, based upon a necessary finding of at least wanton and wilful misconduct, thus satisfying the standard that the District Court adopted. Because Plaintiff Valladares had prosecuted his claim of liability on a theory of negligence, and notwithstanding the jury's award of punitive damages, the District Court held that the Bank was entitled to a directed verdict.

In the process, the District Court did acknowledge and expressly disagree with one conflicting District Court decision (App. 7-8):

> We found only one authority that cuts against the trend of recognizing a qualified privilege for reporting a crime. In *Harris v. Lewis State Bank*, 482 So. 2d 1378, 1384 (Fla. 1st DCA 1986), the court held that the trial court erred in dismissing a count of negligently reporting a crime, although it also stated that "[t]he allegations upon which all the counts of appellant's complaint are based include acts beyond the innocent misunderstanding portrayed in *Pokorny*." To the extent *Harris* holds that a person can be liable for a negligent, but good faith, mistake in summoning the police, it conflicts with the authority summarized above which governs analogous situations. We respectfully disagree with it.

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II.
JURISDICTION

This Court has discretionary jurisdiction based upon conflict under Rule 9.030(2)(A)(iv), Fla. R. App. P.

III.
ISSUES ON REVIEW

A. **WHETHER THE DISTRICT COURT'S DECISION ON THE AVAILABILITY OF A CAUSE OF ACTION FOR NEGLIGENCE, SUBJECT TO A DEFENSE OF GOOD FAITH, EXPRESSLY AND DIRECTLY CONFLICTS WITH *POKORNY* AND WITH *HARRIS V. LEWIS STATE BANK*.**

B. **IF THIS COURT SHOULD AGREE WITH THE STANDARD OF LIABILITY THAT THE DISTRICT COURT ATTRIBUTED TO *POKORNY*, WHETHER THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THAT STANDARD, BECAUSE OF THE JURY'S FINDING IN SUPPORT OF ITS AWARD OF PUNITIVE DAMAGES, AND THE PRINCIPLE OF FLORIDA LAW THAT SUBSTANCE IS MORE IMPORTANT THAN FORM.**

IV.
SUMMARY OF ARGUMENT

The District Court's decision expressly and directly conflicts with *Pokorny* and *Harris*, because it precludes a negligence claim even when the plaintiff has not alleged malicious prosecution or procurement, which *Pokorny* defined as either false

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imprisonment or unlawful detention, but rather has alleged negligence in falsely reporting a crime to law enforcement officials. *Pokorny* in fact holds that in proper cases, such a negligence claim is permitted. And as the District Court acknowledged, on this point its decision is in direct conflict with *Harris*.

Moreover, even accepting the District Court's interpretation of *Pokorny*, should the Court agree with that interpretation, both the evidence and the jury's verdict in the instant case satisfied that standard, because in awarding punitive damages, the jury by definition found that the Bank had acted either intentionally or with conscious disregard of the Plaintiff's rights and safety. That finding satisfies even the *Pokorny* standard that the Bank advocated and the District Court accepted. It therefore conflicts even with the District Court's own interpretation of *Pokorny,* should this Court agree with that interpretation.

V.
ARGUMENT

A. THE DISTRICT COURT'S DISAPPROVAL OF A CAUSE OF ACTION FOR NEGLIGENCE EXPRESSLY AND DIRECTLY CONFLICTS WITH *POKORNY* AND WITH *HARRIS V. LEWIS STATE BANK.*

This Court held in *Pokorny* that a claim that the defendant either himself detained the plaintiff or swore out a warrant for his arrest has to be brought as a

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malicious-prosecution claim. But it also recognized the viability in proper cases of a negligence claim based upon a defendant's reports to the police, leading the police to detain or arrest, if the defendant did not act in good faith.

The claim against the bank in *Pokorny* was for false imprisonment and unlawful detention. In addressing the standard of proof for that particular claim, this Court held that there is not "a separate tort for 'negligently' *swearing out a warrant* for arrest. Such cases may be brought only in the form of civil suits for malicious prosecution. . . . Mere negligence alone is not sufficient." 382 So. 2d at 683 (emphasis added). This statement addressed only a claim of false imprisonment and unlawful detention. The Court held that in prosecuting such a claim, "a private citizen may not be held liable [for malicious prosecution] where he neither actually detained another nor instigated the other's arrest by law enforcement officers. If the private citizen makes an honest, good-faith mistake in reporting an incident, the mere fact that his communication to an officer may have caused the victim's arrest does not make him liable when he did not in fact request any detention." On the latter point--"reporting an incident"--the Court continued: "***As long as the employees acted reasonably***, their action did not constitute 'direct procurement of an arrest' as set forth in *Johnson v. Weiner* [, 155 Fla. 169, 19 So. 2d 699 (Fla. 1944)]" (emphasis added).

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Thus, *Pokorny* held that a claim based on detaining the plaintiff or swearing out an arrest warrant has to be brought as a malicious-prosecution claim. It said that there is no such thing as "'negligently' swearing out a warrant for arrest." 382 So. 2d at 683. But the Court also held that where a defendant did not actually detain the plaintiff or swear out an arrest warrant, but still "may have caused the victim's arrest," the defendant is not liable for such procurement only if he "*acted reasonably*"--which is the negligence standard--but instead made "an honest, good-faith mistake in reporting an accident." 382 So. 2d at 683 (emphasis added). This is consistent with the Court's limited holding that there is no such thing as "negligently *swearing out a warrant* for arrest" (emphasis added). In other cases, the issue is whether the defendant "acted reasonably"--that is, was negligent--as opposed to making a good-faith mistake.

The District Court's decision in the instant case conflicts with *Pokorny*, because here the District Court held that the instant action, which was not based on either detention or swearing out an arrest warrant, could not be brought as a negligence case at all. It said that "[a]lthough the general allegations of the complaint claimed the Bank's conduct rose to the level of bad faith, and those allegations were technically incorporated by reference into the negligence count, Valladares persuaded the trial court to allow the negligence count to go to the jury

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on a theory of simple negligence" (App. 10). It did not acknowledge that these allegations of recklessness also supported the Plaintiff's punitive claim, which was later permitted, and accepted by the jury. It held that even absent a claim for malicious prosecution--that is, for detention or procurement of an arrest--"simple negligence was not a proper theory for the relief claimed" (App. 11). As noted, however, *Pokorny* holds otherwise.

Moreover, the District Court recognized that its holding conflicts with *Harris v. Lewis State Bank*, 482 So. 2d 1378 (Fla. 1st DCA 1986), in which the court not only allowed an action against the bank for malicious prosecution, but also its claims of negligence and fraud and deceit in reporting the plaintiff to the police. The court in *Harris* rejected the bank's argument--accepted by the District Court in the instant case--which attributed to *Pokorny* the holding that the plaintiff's claim "may only be sought in a suit for malicious prosecution." *Id.* at 1384.:

> The holding in *Pokorny* was that an honest, good faith mistake in reporting an incident which results in an arrest does not make the informant liable when he did not in fact request any detention. It is at least arguable that in the case sub judiciae, the misinformation allegedly reported to the police was not the result of an honest, good faith mistake on the part of the bank. The allegations upon which all the counts of appellant's complaint are based include acts beyond the innocent misunderstanding portrayed in *Pokorny*. The *dicta* do not support the bank's assertion.

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Thus, the plaintiff's allegation of negligence was sustainable in *Harris* if the bank's report to the police was not a "innocent misunderstanding." The import of *Harris*, as the District Court in the instant case recognized, is that in proper cases *Pokorny* permits the plaintiff to bring an action for negligence. Both *Pokorny* and *Harris* are in direct and express conflict with the District Court's decision in the instant case.

B. IF THIS COURT SHOULD AGREE WITH THE STANDARD OF LIABILITY THAT THE DISTRICT COURT ATTRIBUTED TO *POKORNY*, THE DISTRICT COURT'S DECISION EXPRESSLY AND DIRECTLY CONFLICTS WITH THAT STANDARD, BECAUSE OF THE JURY'S FINDING IN SUPPORT OF ITS AWARD OF PUNITIVE DAMAGES, AND THE PRINCIPLE OF FLORIDA LAW THAT SUBSTANCE IS MORE IMPORTANT THAN FORM.

Even if this Court agrees with the District Court's interpretation of *Pokorny*, the District Court's decision still conflicts with *Pokorny*, because in the instant case the jury found the Bank to be liable for punitive damages. The standard for an award of punitive damages is proof of "intentional misconduct or gross negligence," with "intentional misconduct" meaning the intentional pursuit of a "course of conduct" with "actual knowledge of the wrongfulness of the conduct and [that] there was a high probability of injury or damage." And "gross negligence" means conduct "so reckless or wanting in care that it constituted a conscious disregard or

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indifference to the life, safety, or rights of persons exposed to such conduct." *Florida Standard Jury Instructions in Civil Cases* § 503.1b(1). Wilful, wanton, and reckless conduct means "conscious and intentional indifference to consequences and . . . knowledge that damage is likely to be done to persons or property." *W.E.B. v. State*, 553 So. 2d 323, 326 (Fla. 1st DCA 1989), *quoted in Lott v. State*, 74 So. 3d 556, 559 n. 6 (Fla. 5th DCA 2011).

This standard comports with the District Court's interpretation of *Pokorny*, because it requires more than negligence, but rather, in the District Court's words, evidence that "the person making the report . . . acted maliciously" (App. 6). Here, the jury's award of punitive damages necessarily signified its finding that the Bank's employees *did* act maliciously. Its verdict is inconsistent with any claim that the Bank's employees made "a good faith mistake" (*id.*).

In this context, it would be an exaltation of form over substance to deprive Plaintiff Valladares of the jury's decision--"an exaltation that would work a substantial injustice . . . ." *Opportunity Funding I, LLC v. Otetchestvennyi*, 909 So. 2d 361, 363 (Fla. 4th DCA 2005). *See Babcock v. Whatmore*, 707 So. 2d 702, 703 (Fla. 1998) ("We would be elevating form over substance" to reach a different result); *Delano v. Dade County*, 287 So. 2d 288, 290 (Fla. 1973) (rejecting a position because "it placed form over inherent substance"). Please note that *Delano* stressed

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the "inherent" nature of the rule that it adopted, as opposed to its label. Here there is no question of the finding "inherent" in the jury's award of punitive damages.

Rodolfo Valladares received the verdict of a jury of his peers. Respectfully, as the above-cited cases make clear, it would not be appropriate to take away that verdict merely because the jury's finding was made in the context of awarding punitive damages, rather than the context of finding liability. Even if this Court should agree with the District Court's interpretation of *Pokorny*, the evidence and the jury's verdict satisfied that interpretation. In this respect as well, the District Court's decision conflicts with *Pokorny*, as well as cited cases counseling the judicial endorsement of substance over form.

V.
CONCLUSION

For the reasons stated, it is respectfully submitted that this Court should exercise its discretion to accept review of the District Court's decision.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via E-mail upon all counsel on the attached Service List on this 25th day of August 2014

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief complies with the font requirements of Fla. R. App. P. 9.210(a)(2).

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