No. _______

IN THE SUPREME COURT, STATE OF FLORIDA

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L. H. YOUNGBLOOD,
Appellant,

vs.

FRANK HERBERT TAYLOR,
Appellee.

- - - - - - - - - - - - - - - - -

APPEAL FROM THE CIRCUIT COURT IN AND
FOR POLK COUNTY, FLORIDA

HON. DON REGISTER, CIRCUIT JUDGE

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BRIEF OF APPELLEE

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FILED

ALPHATETICAL
TABLE OF CITATIONS

CASES	PAGE
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TEXTS

FSA, Section 768.03 3

3 Am. Jur. 189, 190 7

STATEMENT OF POINTS INVOLVED

Appellee has revised, simplified and reversed the order of the two questions presented in Appellant's main brief, and states the points involved, as follows:

POINT I

DOES THE FINAL JUDGMENT ENTERED ON VERDICT FOR DEFENDANT IN A PRIOR SUIT BY THE FATHER AS NEXT FRIEND OPERATE AS AN ESTOPPAL BY JUDGMENT AND BAR RECOVERY IN A SUBSEQUENT SUIT BY THE FATHER AGAINST THE SAME DEFENDANT WHERE BOTH SUITS ARE BASED ON THE SAME ALLEGED NEGLIGENCE OF DEFENDANT?

POINT II

IS IT ERROR TO ENTER FINAL JUDGMENT IN A SUIT BY A PARENT TO RECOVER CONSEQUENTIAL DAMAGES RESULTING TO HIMSELF FROM AN ALLEGED NEGLIGENT INJURY TO HIS MINOR CHILD WHERE DEFENDANT HAS FILED A DEFENSE OF ESTOPPEL BY JUDGMENT, PLEADING THE FINAL JUDGMENT THERETOFORE ENTERED AGAINST THE PARENT AS NEXT FRIEND PRIOR TO THE TIME FOR APPEAL TO THE SUPREME COURT HAS EXPIRED?

ARGUMENT

POINT I

Does the final judgment entered on verdict for defendant in a prior suit by the father as next friend operate as an estoppal by judgment and bar recovery in a subsequent suit by the father against the same defendant where both suits are based on the same alleged negligence of defendant?

The trial court answered the question in the affirmative.

L. H. Youngblood brought two suits against the defendant Frank Herbert Taylor for the injuries to his minor son resulting from an automobile-bicycle accident of June 30, 1953. Both suits involved the same basic issues of the same negligence and contributory negligence. In the first suit L. H. Youngblood sued as next friend and in the second suit he claimed damages to him resulting from injuries to his son. The first suit was tried before a jury which returned a verdict for the defendant and judgment thereon was entered on December 24, 1954. Upon the entry of said final judgment, the defendant filed an additional defense in the second suit, setting up the estoppel of the final judgment entered in the first suit. The trial court held the defense good. This is the same procedure set forth in the opinion in Rehe v. Airport U-Drive, Inc., Fla., 63 So. 2d 66.

The case at bar and the cited case, Rehe v. Airport U-Drive, Inc., supra, are expressly "on all fours" as to legal principles involved. That is, in the cited case a father had brought two suits for the death of his son, resulting from an automobile accident. Both suits arise

from the same act or acts of negligence. Henry Rehe, Sr. first instituted suit against the defendant alleging negligence of the driver and sought damages under section 768.03 F.S.A., the action for wrongful death of a minor child. The jury returned a verdict for the defendant and judgment for the defendant was entered. Prior to the above mentioned trial, Henry Rehe, Sr. filed a second suit against the defendant as administrator of the estate of Henry Rehe, Jr. This action was for the same act or acts of negligence as set forth in the first action. After the aforementioned judgment was entered for Airport U-Drive, Inc., the defendant filed an additional defense in the second action, with leave of court, pleading estoppel by judgment. A motion of plaintiff to strike this defense was denied and the defendant filed its motion for judgment on the pleadings which was granted. Final judgment for the defendant was entered and the appeal to this court was taken from that judgment. This court affirmed the judgment. (WAS APPEAL PENDING IN FIRST SUIT?)

In the case at bar, Marvin Youngblood was injured in an automobile-bicycle accident of June 30, 1953. Suit was instituted by L. H. Youngblood as next friend for his minor son, seeking damages for the son from the defendant, Frank Herbert Taylor. The suit came on for trial and the jury returned a verdict for the defendant. Judgment was entered for the defendant on December 24, 1954. Prior to the above mentioned trial, L. H. Youngblood filed suit against the defendant Frank Herbert Taylor.

This suit was for the same alleged negligence set forth in the first suit. After the aforementioned judgment was entered for Frank Herbert Taylor, the defendant filed an additional defense in the second suit, with leave of court, pleading estoppel by judgment. A motion of plaintiff to strike this defense was denied and the defendant filed his motion for judgment on the pleadings which was granted. Final judgment for the defendant was entered and this appeal to this court was taken from the judgment.

The Rehe case, supra, cites three decisions of this court, namely; Collins v. Hall, 117 Fla. 282, 157 So. 646, 99 ALR 1086; Epps v. Railway Express Agency, Fla., 40 So. 2d 131, and Edwards v. Food Machinery Corporation, Fla., 51 So. 2d 303. In the Collins case, supra, this court affirmed a judgment on a plea of estoppel by judgment where the widow of Collins sued the defendant for the wrongful death of her husband for an accident which he had sued the defendant for prior to his death and which latter case had terminated in a judgment for defendant. In the Epps case, supra, this court affirmed a judgment for defendant on a plea of estoppel by judgment where the widow of Epps had previously sued for the wrongful death and was suing in the case appealed as administratrix of the estate of her husband. The Edwards case, supra, does not recite the facts but it is obvious that the facts are similar to the Epps case, in that the appealed case was the one brought by the father in the representative capacity of administrator.

In the case at bar and in the cited cases, each plaintiff had instituted one suit on the alleged tort, had judgment rendered in favor

of the defendant and then had a second judgment entered against them on a plea of estoppel by judgment based on the first suit instituted. In each case one individual controlled both cases. In the Rehe case and in the Epps case, the second suit was in the representative capacity. In the case at bar, the first case was in the representative capacity. In the Epps case, supra, this court said in comparing the cited case to the Collins case, supra:

> "On principle there can be no good reason that the same conclusion should not be reached when the converse situation is presented. Whether the first suit filed be by the widow or by the presonal representative, all suits depend upon the existence of a primary right of recovery in the decedent; the original act of negligence must be the gist of all actions maintainable either by the decedent in his lifetime or by the personal representative and the widow after his death." (Emphasis added)

This court said in Rehe v. Airport U-Drive, Inc., supra:

> "It is clear from this record that the only difference between the two actions is with reference to the element of damages. There is no difference as to the allegations of negligence." (Emphasis added).

In the case at bar, the only difference between the two suits is in reference to the element of damages. There is no difference as to the allegations of negligence. After the trial of the first case against the defendant, Frank Herbert Taylor, for alleged negligence in the operation of his automobile at the time it collided with the bicycle ridden by Marvin Youngblood, judgment in that case was entered in favor of the defendant Frank Herbert Taylor. Then Frank Herbert Taylor as defendant in the second case, the case at bar, filed a plea of

estoppel by judgment. The allegations of this plea were proved by the stipulation of counsel filed. That is, the stipulation admits the two suits brought by L. H. Youngblood against Frank Herbert Taylor "allege and involve the same basic issues of negligence and contributory negligence" and that one of those two suits has been tried by a jury and verdict returned for the defendant and a final judgment for the defendant entered.

This court considered the purpose for the defense of estoppel by judgment and how it operates in Gordon v. Gordon, Fla., 1952, 59 So. 2d, 40 at 44, which incidentally was cited by the appellant here, when the court said:

> "* * while the principle of estoppel by judgment is applicable where the two causes of action are different, in which case the judgment in the first suit only estops the parties from litigating in the second suit issues - that is to say points and questions - common to both causes of action and which were actually adjudicated in the prior litigation."

This court also said, in the cited case, that "the ultimate purpose of *estoppel by judgment* is to bring litigation to an end." (Emphasis by court). L. H. Youngblood controlled the case brought by him as next friend against Frank Herbert Taylor. The issues of negligence and contributory negligence were actually adjudicated. Those same questions are the basic foundation of this case. He is estopped from litigating them in the second case, the case at bar. Frank Herbert Taylor and the courts are entitled not to be bothered by interminable litigation for the same cause. Gordon v. Gordon, Supra, at page 44.

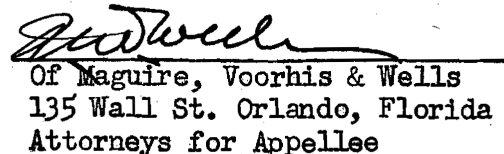
POINT II

Is it error to enter final judgment in a suit by a parent to recover consequential damages resulting to himself from an alleged negligent injury to his minor child where defendant has filed a defense of estoppel by judgment, pleading the final judgment theretofore entered against the parent as next friend prior to the time for appeal to the Supreme Court has expired?

The final judgment which was pleaded in the defense of estoppel by judgment was final. It adjudicated the merits of the cause and disposed of the pending litigation, leaving nothing further to be done but the execution. Gore v. Hansen, Fla., 1952, 59 So. 2d 538. The judgment was conclusive and is binding on the parties until it is reversed or vacated. 3 Am. Jur. 189. Its effect as evidence is not altered, suspended, or stayed by any appeal. 3 Am. Jur 190.

It is, therefore, respectfully urged that the judgment of the court below should be affirmed.

Respectfully submitted,



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