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Case Law Update

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Negligence-Duty Limones v. School Dist. Of Lee County

No. SC13-932, 2015 WL 1472236 (Fla. April 2,2015)

The Supreme Court clarified the limited role of the court in determining the existence of a duty.

A child passed out during a soccer game. The school failed to use an available AED to restart his heart. Plaintiff's expert testified that earlier use of the AED would have prevented brain damage. The trial court entered summary judgment in favor of the school board. The supreme court reversed, explaining that whether the defendant had a duty to use the AED is for a jury.

"Florida law recognizes the following four sources of duty: (1) statutes or regulations; (2) common law interpretations of those statutes or regulations; (3) other sources in the common law; and (4) the general facts of the case. ...[W]hen the source of the duty falls within the first three sources, the... court must simply determine whether a statute, regulation, or the common law imposes a duty of care upon the defendant. The judicial determination of the existence of a duty is a minimal threshold that merely opens the courthouse doors. .... Once a court has concluded that a duty exists, Florida law neither requires nor allows the court to further expand its consideration into how a reasonably prudent person would or should act under the circumstances as a matter of law. We have clearly stated that the remaining elements of negligence— breach, proximate causation, and damages—are to be resolved by the fact-finder."

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"Even when the duty is rooted in the fourth prong, factual inquiry into the existence of a duty is limited to whether the "defendant's conduct foreseeably created a broader 'zone of risk' that poses a general threat of harm to others." ...

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"[S]ome facts must be established to determine whether a duty exists, such as the identity of the parties, their relationship, and whether that relationship qualifies as a special relationship recognized by tort law and subject to heightened duties.... However, further factual inquiry risks invasion of the province of the jury".

The Court held that the defendant owed a common law duty to supervise the child, and that once he was injured, a duty to take reasonable measures and come to his aid to prevent aggravation of his injury. It is a for the jury to determine whether the defendant's actions, including failure to use the AED, breached that duty and resulted in the damage that the child suffered.

Proposals for Settlement Pratt v. Weiss,

Case No. SC12-1783, 2015 WL 1724574 (April 16, 2015)

The court strictly construed the proposal for settlement rule. The court found that a proposal, the title of which indicated that it was only from one defendant, was a joint proposal because the text indicated that there were "offerors". The proposal stated that it was an attempt to "resolve all pending matters between the Plaintiff and the named Defendants". .

The court concluded that the offer was a joint offer because its text "unambiguously refers to the defendant offerors in the plural. Thus, under the clear wording of

the proposal, two offerors ...presented the offer." The proposal was invalid because it failed to apportion the settlement amount between the two defendants.

However, under the amended verison of Rule 1.442(c)(4), which was not in effect at the time of this offer, a proposal is not required to be apportioned between vicariously liable defendants.

Audiffred v. Arnold

Case No. 12-2377, 2015 WL 1724250 (April 16, 2015)

Again construing the proposal for settlement statute and rule strictly, the Supreme Court held "that when a single offeror submits a settlement proposal to a single offeree pursuant to section 768.79 and rule 1.442, and the offer resolves pending claims by or against additional parties who are neither offerors nor offerees, it constitutes a joint proposal that is subject to the apportionment requirement in subdivision (c)(3) of the rule."

The proposal stated that it was from only one plaintiff, but stated that it would resolve all claims of both plaintiffs. The court held that this was a joint proposal and was required to be apportioned.

Release - Exculpatory Claus Sanislo v. Give Kids the World

157 So.3d 256 (Fla. 2015)

An exculpatory clause is not per se invalid solely because it does not specifically use the word "negligence."

The court distinguishes, and does not overrule, cases imposing that requirement for indemnity agreements.

"Public policy disfavors exculpatory contracts because they relieve one party of the obligation to use due care and shift the risk of injury to the party who is probably least equipped to take the necessary precautions to avoid injury and bear the risk of loss.. . . Nevertheless, because of a countervailing policy that favors the enforcement of contracts, as a general proposition, unambiguous exculpatory contracts are enforceable unless they contravene public policy. . . . Exculpatory clauses are unambiguous and enforceable where the intention to be relieved from liability was made clear and unequivocal and the wording was so clear and understandable that an ordinary and knowledgeable person will know what he or she is contracting away. . . ."

"Despite our conclusion, however, we stress that our holding is not intended to render general language in a release of liability per se effective to bar negligence actions. ... [E]xculpatory contracts are, by public policy,disfavored in the law because they relieve one party of the obligation to use due care. ... Further, exculpatory clauses are only unambiguous and enforceable where the language unambiguously demonstrates a clear and understandable intention to be relieved from liability so that an ordinary and knowledgeable person will know what he or she is contracting away"