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Case No. SC2024-0139
L.T. No. 6D23-1379

IN THE SUPREME COURT OF FLORIDA

FLORIDA BC HOLDINGS, LLC
D/B/A SYNERGY EQUIPMENT

Appellant/Petitioner

v.

JAY E. REESE

Appellee/Respondent.

PETITIONER'S JURISDICTIONAL BRIEF

On Discretionary Review from a Decision of the
Sixth District Court of Appeal

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STATEMENT OF THE ISSUES

Petitioner seeks to invoke this Court's jurisdiction to decide whether the impact rule applies to intentional torts. Specifically, the Sixth District Court of Appeal certified the following questions of great public importance:[1]

(1) Subject to exceptions previously recognized by the Supreme Court of Florida, does the impact rule generally apply to intentional torts?

(2) Does the impact rule apply to the tort of tortious interference with an advantageous business relationship and, if so, does the impact rule apply when such tort is committed with actual malice?

Additionally, the Sixth District Court of Appeal's decision in this case expresses and certifies conflict with the First District Court of Appeal's decision in Reid v. Daley, 276 So. 3d 878 (Fla. 1st DCA 2019).

[1] In his dissent, Judge Smith agreed with the need to certify a question to this Court but suggested the question be restated as: "Does Florida's impact rule apply to a claim for tortious interference with an advantageous business relationship?"

STATEMENT OF THE CASE AND FACTS

This case involves the appeal of a $111,134.80 final judgment following a jury verdict against Defendant-Petitioner, Florida B.C. Holdings, LLC d/b/a Synergy Equipment ("Synergy"). App. 9. Synergy employed Plaintiff-Respondent, Jay E. Reese ("Reese"), as a sales coordinator beginning in 2015. App. 4. As a condition of employment, Synergy requires all sales personnel to execute non-compete agreements. App. 5. During its new hire process, Synergy requires new employees to complete a packet of new hire paperwork. App. 4. A checklist of all documents within the packet serves as the front page and, generally, the documents are marked off on the checklist once they are received. App. 4-5.

Eventually, Reese left his position at Synergy and began working for a new company, Ahern Rentals, Inc. ("Ahern"). App. 5. Ahern is a direct competitor of Synergy operating in the same geographic area. Id. Synergy learned of Reese's employment at Ahern and understood it to be in violation of the non-compete agreement. Id. While Synergy planned to enforce Reese's agreement, Synergy could not locate an executed copy. Id. Complicating matters, the checklist associated with Reese's new hire paperwork did not indicate

the non-compete agreement had been received. Id. However, the Synergy employee who provided Reese with his new hire paperwork confirmed he provided the non-compete to Reese and watched Reese sign the agreement. App. 6.

Based upon this information, coupled with Synergy's policy that all sales personnel were required to execute non-compete agreements, Synergy sent a demand letter to Reese and Ahern asserting its intent to enforce the non-compete agreement. Id. Synergy explained to Ahern that it would proceed under a lost contract theory as it could not locate the signed non-compete. Id. Ahern terminated Reese's employment. Id. Reese, who could not recall whether he signed a non-compete agreement, was unemployed for roughly thirty (30) days. Id.

Reese's complaint contained a claim for tortious interference. App. 6. The case ultimately proceeded to jury trial on a narrow set of issues. App. 9. Among other questions, the jury was asked to determine whether Reese should be awarded damages for emotional distress and in what amount. Id. Synergy moved for directed verdict on multiple issues, including whether the jury could award emotional

distress damages or whether such damages were barred by the impact rule. App. 8.

Synergy argued that, in absence of a physical impact or a showing that tortious interference fit in one of the narrow exceptions to the impact rule, Reese could not recover damages for emotional distress. App. 8-9. The trial court denied this motion. App. 9. The jury decided Synergy unjustifiably interfered with Reese's employment and awarded $36,643.50 in lost wages and benefits, and $50,000 in emotional distress damages. Id.

Synergy appealed, arguing the trial court erred in denying directed verdict on the issue of emotional distress damages and that Synergy's interference was justified and privileged[2].

In a 2-1 split opinion, the Sixth District held the impact rule does not apply to intentional torts and affirmed the trial court's rulings in full. App. 31. The Sixth District also held that Reese' tortious interference claim fell under a "freestanding tort" exception to the impact rule and potentially a "malice" exception. App. 28-31.

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[2] The Sixth District affirmed the trial court's denial of Synergy's motion for directed verdict as to liability on the tortious interference claim without discussion.

The Sixth District's dissenting opinion agreed the issue warranted review by this Court but disagreed with the majority's holding, concluding that "intentional interference with an advantageous business relationship is not a recognized exemption to the impact rule." App. 30-43. Accordingly, the dissenting opinion explained why the award for emotional pain and suffering should be reversed. Id.

ARGUMENT FOR JURISDICTION

I. THIS COURT HAS JURISDICTION BECAUSE THE SIXTH DISTRICT COURT OF APPEAL CERTIFIED DIRECT CONFLICT AND QUESTIONS OF GREAT PUBLIC IMPORTANCE.

This Court should exercise its jurisdiction in this case because the decision of the Sixth District Court of Appeal certified conflict with another district court of appeal and passed upon certified questions of great public importance. Fla. R. App. P. 9.030(a)(2)(A)(iv)-(vi). As demonstrated by the Sixth District's opinion, the scope and application of the impact rule requires clarification that can be achieved if this Court accepts jurisdiction.

A. This Court has jurisdiction because the Sixth District certified conflict with the First District's decision in Reid v. Daley.

This Court has discretionary jurisdiction pursuant to Article V, Section 3(b)(4) because the Sixth District certified a direct conflict with Reid v. Daley, 276 So. 3d 878 (Fla. 1st DCA 2019). Certification of conflict provides this Court with jurisdiction *per* se. State v. Vickery, 961 So. 2d 309, 312 (Fla. 2007). This Court invokes conflict jurisdiction to "stabilize the law by a review of decisions which form patently irreconcilable precedents." Fla. Power & Light Co. v. Bell, 114 So. 2d 697, 699 (Fla. 1959).

Here, the Sixth District held that the impact rule does not apply to intentional torts. App. 31. The Sixth District explained that its holding directly and expressly conflicts with Reid v. Daley, 276 So. 3d 878 (Fla. 1st DCA 2019). App. 32. In Reid, the First District applied the impact rule to appellant-plaintiff's intentional tort claims and determined the appellant could not recover for emotional distress damages absent a physical impact. Id. at 880.

These holdings are irreconcilable. At present, a plaintiff whose case is heard in the Sixth District may recover emotional distress damages when pursuing intentional torts while a plaintiff whose case

is heard in the First District may not. The Court should accept review of the Sixth District's decision and provide uniform guidance on the availability of emotional distress damages in intentional tort cases, and particularly, in cases involving tortious interference with an advantageous business relationship.

B. This Court has jurisdiction because the Sixth District's decision below passed upon certified questions of great public importance.

This Court has discretionary jurisdiction to review "any decision of a district court of appeal that passes upon a question certified by it to be of great public importance[.]" Art. V, § 3(b)(4), Fla. Const. Pursuant to Article V, Section 3(b)(4), this Court may review a certified question when (1) disposition of a matter by a district court qualifies as a decision, (2) a majority supports the decision to certify the question, and (3) the decision under review passes upon the certified question. Floridians for a Level Playing Field v. Floridians Against Expanded Gambling, 967 So. 3d 832, 833 (Fla. 2007).

Here, the Sixth District's decision meets the above criteria. First, the Sixth District reached a clear majority decision on the issue and resolved the case on the merits. App. 32. Second, the decision

to certify the questions is supported by a majority. Id. Finally, the decision passed upon the certified question when the Sixth District held the impact rule does not apply to intentional torts. App. 31.

This Court first recognized the impact rule in International Ocean Telegraph Co. v. Saunders, 14 So. 148 (Fla. 1893). There, this Court was presented with the following issue: "Can an action be sustained, and can damages be admeasured, for the breach of contract that results in mental suffering alone, without any accompanying physical injury or suffering, and without any concomitant damage to the person, character, reputation or property?" Id. at 148.

This Court recognized a need to limit the availability of emotional distress damages which "soar[] so exclusively within the realm of spirit land that it is beyond the reach of the courts to deal with[.]" Id. at 152. As a result, this Court determined emotional distress damages were not available to the plaintiff. Id.

While Florida courts largely adhered to the impact rule, over time courts, including this Court, began carving out limited exceptions in extraordinary circumstances. The first carving began when this Court found a litigant may still recover damages for

emotional distress unconnected to a physical impact if he can show the defendant engaged in conduct which would support recovery of punitive damages. See, e.g. Kirksey v. Jernigan, 45 So. 2d 188 (Fla. 1950); Crane v. Loftin, 70 So. 2d 574, 575-576 (Fla. 1954); La Porte v. Associated Independents, Inc., 163 So. 2d 267 (Fla. 1964). Decades later, this Court held that in certain cases, bystanders may also recover emotional distress damages unconnected with direct physical impact. See Champion v. Gray, 487 So. 2d 17, 20, 22 (Fla. 1985).

More recently, this Court summarized other exceptions to the impact rule "in a certain very narrow class of cases in which the foreseeability and gravity of the emotional injury involved, and lack of countervailing policy concerns, have surmounted the policy rationale undergirding application of the impact rule." Rowell v. Holt, 850 So. 2d 474, 478 (Fla. 2003). See, e.g. Kush v. Lloyd, 616 So. 2d 415 (Fla. 1992) (creating an exception for negligent failure to diagnose an inheritable genetic impairment); Tanner v. Hartog, 696 So. 2d 705 (Fla. 1997) (creating an exception for negligent stillbirth); Rowell v. Holt, 850 So. 2d 474 (Fla. 2003) (creating an exception for legal

malpractice resulting in protracted period of wrongful pretrial incarceration).

As it relates to intentional torts specifically, caselaw is unclear on whether intentional torts are excluded from, or exceptions to, the impact rule. As discussed by the majority in the case below, this Court has never expressly held that the impact rule applies to intentional torts, nor has it expressly held that intentional torts are excluded from the impact rule. App. 21. Instead, this Court appears to have explained in dicta that certain intentional torts, such as defamation, are exceptions to the impact rule because such torts primarily result in emotional distress.

The Sixth District's difficulty in following this Court's prior opinions addressing this issue was based, in part, on the following statement in Rowell:

> The impact rule does not apply to recognized intentional torts that result in predominantly emotional damages, including the intentional infliction of emotional distress. . . defamation. . . . and invasion of privacy[.] While classification has not been consistent throughout our jurisprudence, intentional torts have been deemed exclusions from, as opposed to exceptions to, the impact rule. See Eastern, 557 So.2d at 579 (Ehrlich, C.J., specially concurring) (reiterating that a physical

> manifestation of psychological trauma is not required in connection with intentional infliction of emotional distress). But see R.J., 652 So.2d at 363 (discussing Eastern in the context of exceptions to the impact rule). There is, however, no cognizable action for simple negligence resulting in psychological trauma, alone, unless the case fits within one of the narrow exceptions to the impact rule.

Rowell, 850 So. 2d at 478 n 1 (citations omitted).

While this appears to be a straightforward acknowledgment that the impact rule generally applies to intentional torts (aside from certain recognized intentional torts), later decisions from this Court led to the difficulties experienced by the Sixth District below.

For example, in Florida Department of Corrections v. Abril, this Court, when deciding whether to allow recovery of emotional distress damages for the negligent failure to ensure the confidentiality of HIV test results, discussed the history of the impact rule in Florida. 969 So. 2d 201, 206-207. In doing so, this Court cited to Rowell and explained that "we have noted that the impact rule does not apply to **any** intentional torts, such as defamation, invasion of privacy, and intentional infliction of emotional distress." Id. (citing Rowell, 850 So. 2d at 478 n 1) (emphasis added).

As the Sixth District pointed out, the Rowell footnote cited by this Court in Abril does not clearly support the broad pronouncement regarding application of the impact rule to intentional torts in Abril. App. 18-23. Like the Sixth District in the case below, other Florida courts have struggled to apply the pronouncement in Rowell, with some courts noting that emotional distress damages are unavailable in intentional tort cases absent a physical impact[3] and others approving of the recovery of such damages.[4]

The Sixth District, in its opinion, ultimately held that the impact rule is inapplicable to intentional torts. App. 31. The dissent points out that the 1893 case establishing the impact rule in Florida involved a breach of contract claim, and not a negligence claim. App. 35-36. In that regard, the dissent provides a competing view and

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[3] See, Dorvil v. Nationstar Mortgage, LLC, Case No: 17-23193-CIV-MARTINEZ-OTAZO-REYES 2019 WL 1992932, at *18-19 (Fla. S.D. Fla. Mar. 26, 2019); LRX, Inc. v. Horizon Assocs. Joint Venture, 922 So. 2d 984, 986 (Fla. 4th DCA 2004); S.H Investment & Devel. Corp. v. Kincaid, 495 So. 2d 768, 770 (Fla. 5th DCA 1986); Swerhun v. Gen. Motors. Corp., 812 F. Supp. 1218, 1221 (M.D. Fla. 1993); Peacock v. General Motors Acceptance Corp., 432 So. 2d 142, 146 (Fla. 1st DCA 1983).

[4] See, Melford v. Kahane and Assocs., 371 F. Supp. 3d 1116, 1128 (S.D. Fla. 2019); Rivers v. Grimsley Oil Co., Inc., 842 So. 2d 975, 976 (Fla. 2d DCA 2003); Albritton v. Gandy, 531 So. 2d 381, 388 (Fla. 1st DCA 1988).

concludes the impact rule precludes recovery of emotional distress damages except in certain instances recognized by this Court. Despite the stark contrast in the majority and dissenting opinions, both agreed there are questions of great public importance on the application of the impact rule that need to be addressed by this Court.

A decision and definitive holding from this Court providing clarity and guidance on the application of the impact rule to intentional torts generally and to this case specifically will benefit more parties than just the present litigants. Indeed, the rule affects the ability of plaintiffs across the state to recover an entire category of damages, or conversely, the ability of defendants to be free from defending claims that "soar… exclusively within the realm of spirit land…" Saunders, 14 So. at 152.

CONCLUSION

For all of the foregoing reasons, this Court has discretionary jurisdiction pursuant to both a certified conflict and certified questions of great public importance, and it should accept review.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing notice was filed with the Clerk of Court on January 31, 2024, via the Florida Courts E-Filing Portal which will serve a notice of electronic filing to all counsel of record.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.210(a)(2), Florida Rules of Appellate Procedure, counsel for Appellant hereby certifies that this Brief complies with the word count limitation and contains 2,330 words (including words in headings, footnotes, and quotations), according to Microsoft Word. This document also complies with the line spacing, type size, and typeface requirements of Rule 9.045, Florida Rules of Appellate Procedure.

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