THE WEEK IN TORTS

A Weekly Summary Of The Latest Case Decisions Critical To Those Helping Victims of Negligence

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FLORIDA LAW RECOGNIZES A CAUSE OF ACTION FOR NEGLIGENT TRANSMISSION OF A SEXUALLY TRANSMISSIBLE DISEASE--ALSO CLAIM FOR SUCH NEGLIGENT TRANSMISSION NEED NOT TRACK THE LANGUAGE OF §384.24.

Kohl v. Kohl, 39 Fla. Law Weekly D2074 (Fla. 4th DCA October 1, 2014):

In 2009, a woman filed a two-count complaint seeking (1) to dissolve her marriage and (2) to extract damages for assault by way of transmission of the HPV (human papillomavirus). The claim for negligent transmission of a sexually transmissible disease was based on the former husband's failure to warn the former wife during their marriage that he had the virus.

The complaint asserted two bases to establish the former husband's constructive knowledge that he had the virus: (a) The pleading alleged that the former husband engaged in extramarital affairs and hired multiple prostitutes and (b) the complaint asserted that the former husband knew or should have known he was exposed to HPV as his ex-wife had undergone a hysterectomy. There were no allegations that the former husband had been diagnosed with HPV or had experienced symptoms of the disease.

§384.24, Florida Statutes is a criminal statute that makes it a first degree misdemeanor to knowingly transmit certain sexually transmissible diseases. In a 2nd DCA case, the court disagreed that a violation of this section had constituted negligence per se, because it held that the statute was not designed to protect a particular class of persons, but rather the public in general.

In that 2nd DCA case (Gabriel v. Tripp), the Second District also held that §384.24 exclusively controlled the elements of the negligence cause of action on this kind of case. The Fourth District disagreed. It found that the co-existence of common law negligence and a garden variety statutory violation is grounded in the common law's role as an evolving body. Thus, the Fourth District recognized that negligent transmission of a sexually transmissible disease can arise as a common law negligence action, without tracking the specific language of the statute.

Recognizing the existence of the possibility of the "type" of claim, the Fourth District still affirmed the dismissal of this case. The linchpin of liability for imposing a legal duty to avoid negligent transmission of a sexually transmissible disease, according to the Fourth District, is the defendant's knowledge that he or she harbors the disease. A duty does not lie where the defendant is unaware of the condition, since the risk created by his or her sexual activity is unforeseen.

In this case, neither bases asserted for the defendant's constructive knowledge of having HPV demonstrated the requisite knowledge. The court found in this case the plaintiff failed to allege elements of even constructive knowledge, let alone actual knowledge.

Finally, as it pertains to HPV specifically, the court determined that given the disease's prevalence, and the fact that its effects may remain dormant for years if not decades, it held that only a defendant with actual knowledge that he or she has HPV should be subject to liability in negligence for its transmission.

TRIAL COURT DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW WHEN IT DENIED A NON-PARTY LAW FIRM'S MOTION FOR ORDER SEEKING TO PROTECT IT FROM HAVING TO TURN OVER ITS BILLING AND RELATED RECORDS STEMMING FROM ITS REPRESENTATION OF PARTIES TO A TRUST IN THEIR EARLIER DISSOLUTION CASE WITHOUT FIRST REQUIRING EVIDENCE TO ESTABLISH THE RELEVANCY OF THOSE RECORDS.

Presley Law & Associates v. Casselberry, 39 Fla. Law Weekly D2063 (Fla. 2nd DCA October 1, 2014):

In a case involving a trust, the trial judge ordered the law firm representing the interests of certain third-parties associated with the case to turn over its billing, and related trust records. The party requesting the records, the former wife in a related dissolution action, wanted to establish the reasonableness of the fees and hours expended by her own attorneys in the earlier proceeding against the former husband. The firm argued that the trial court failed to find that the requested items were relevant. The former wife argued they were relevant because the former husband was arguing against the amount of fees she sought in her action to collect unpaid alimony.

The appellate court did not find any evidence of relevancy. Without it, it was a departure from the essential requirements of law to require production of those records.

ERROR TO GRANT SUMMARY JUDGMENT IN FAVOR OF DEFENDANT BASED ON RELEASE WHERE THE CLAIMS FOR WHICH THE UNDERLYING ACTION WAS BROUGHT WERE NOT INCLUDED CLEARLY IN THE CLAIMS DESCRIBED IN THE RELEASE.

Moxley v. U-Haul, 39 Fla. Law Weekly D2065 (Fla. 2nd DCA October 1, 2014):

The court reviewed what it described as a very narrow issue, and looked at the release executed to see if it was broad enough to release claims brought by other injured victims. In this case, where the collision caused the wrongful death of both drivers, one driver's estate entered into a release with U-Haul, who owned the vehicle, the permissive driver of the U-Haul truck's estate settled its claim with U-Haul for $5,000. In analyzing the actual language of the release, the court determined that the scope was not broad enough as a matter of law to release U-Haul from the contractual claim asserted, and reversed the entry of summary judgment.

PERSONAL SERVICE NOT REQUIRED FOR A FLORIDA COURT TO HAVE JURISDICTION TO RENDER A MONEY JUDGMENT AGAINST THE DEFENDANT IN INSTANCE WHERE SERVICE IS EFFECTED IN COMPLIANCE WITH THE HAGUE CONVENTION.

Puigbo v. Medex Trading, LLC, 39 Fla. Law Weekly D2094 (Fla. 3rd DCA October 1, 2014):

The defendant argued that although he was validly served pursuant to Article 223 of the Civil Procedure Code of Venezuela, such service was insufficient to confer in personam jurisdiction under Florida law. Because the court concluded that service was made in compliance with Hague Service Convention (and found it satisfied due process concerns), the court affirmed the trial judge's decision finding service valid.

§49.194, Fla. Stat. states that service of persons outside the U.S. may be required to conform with the provisions of the Hague Convention. The Hague Convention applies in all civil or commercial matters where there is occasion to transmit a judicial or extrajudicial document for service abroad. Florida law generally requires personal service to confer personal jurisdiction in actions for personal money judgments. However, though it is contemplated under Florida law, serving a defendant in another country necessarily requires the transmittal of documents abroad.

While the defendant argued that even though the Hague Convention applied, and he was served in conformity with it, he asserted that personal service is still required under Florida law. The court explained that this contention misapprehended the interplay between the relevant provisions of §48.193(3), 48.194(1) and the Hague Convention, and further discounted the effect of the Supremacy Clause.

When process is served and return of process is completed by an official of a country that is a signatory with the Hague Service Convention, that service is sufficient. Any additional requirement which may be imposed by Florida law is preempted.

In this case, the plaintiff demonstrated that service under Article 223 of the Civil Procedure Code of Venezuela was likely to come to the defendant's attention. There was also evidence that the defendant had actual knowledge of the case. Accordingly, the court concluded service was properly effectuated on the defendant, and apprised him of the pendency of the action.

Kind Regards

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