

FLORIDA SUPREME COURT
TALLAHASSEE, FLORIDA

CASE No. _____

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| CITY OF HALLANDALE, |) | Lower Tribunal Case No. 4D02-3366 |
| a municipality, |) | (District Court of Appeal of Florida, |
| |) | Fourth District) |
| Petitioner, |) | |
| |) | |
| v. |) | |
| |) | |
| SAL AMATO AND CLARA AMATO, |) | |
| |) | |
| Respondents. |) | |
| |) | |

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| PETITIONER’S BRIEF ON JURISDICTION |
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STATEMENT OF THE CASE AND OF THE FACTS

Plaintiff, Sal Amato, filed a negligence complaint against Hallandale for personal injuries he allegedly suffered as a result of a motor vehicle collision between Hallandale's then City Manager and the Plaintiff. Plaintiff's wife also joined him in his claim asserting a claim for loss of consortium.

In deposition, Plaintiff testified that he could not lift any heavy weight, and could not climb stairs without pain (Depo. pg. 8, lines 6-8). Plaintiff also testified that he was disabled and that even though there were access ways into buildings he found it very hard to get into them (Depo. pg. 46, lines 18-20). Plaintiff also unequivocally testified that he would not get underneath his car because he could not do so (Depo. pg. 51, lines 17-20).

During the course of the litigation, Hallandale obtained surveillance tapes of the Plaintiff. The tapes showed Plaintiff, for over a two hour period, working on a pickup truck. The tape showed Plaintiff going underneath his vehicle to perform work on the vehicle. An additional surveillance tape showed the Plaintiff climbing a ladder onto the roof of his residence and pulling up a heavy motor onto his roof.

Based upon the discrepancies between Plaintiff's deposition testimony and the surveillance tapes, Hallandale filed a motion to dismiss Plaintiff's complaint for fraud on the court. After a lengthy evidentiary hearing in which the trial judge viewed the videotapes, Plaintiff's deposition testimony and heard testimony from the Plaintiff, the trial judge dismissed Plaintiff's complaint for committing fraud on the court.¹

Plaintiff appealed the trial judge's decision and the Fourth District Court of Appeal ultimately reversed the dismissal holding that it was for the jury to weigh these discrepancies and the trial judge should not have dismissed Plaintiff's lawsuit. Hallandale timely filed its appeal of the Fourth District's decision to this Court.

SUMMARY OF ARGUMENT

Petitioner, City of Hallandale ("Hallandale"), seeks review, pursuant to Art. V, Section 3(b)(3), Fla. Const. and Fla.R.App.P. 9.030(a)(2)(A)(iv), of the decision of the Fourth District Court of Appeal rendered October 10, 2003. Amato v. City of Hallandale, 854 So.2d 812 (Fla. 4th DCA 2003). The

¹ As correctly found by the 4th District, in the evidentiary hearing before the trial judge Plaintiff admitted to going up and down the ladder twice and hauling a motor onto his rooftop.

Fourth District's decision expressly and directly conflicts with a decision of this Court and with decisions of other district courts of appeal on two principles of law. The Fourth District's decision expressly and directly conflicts with a decision of this Court on the standard to be applied by an appellate court reviewing a trial judge's ruling dismissing a case for fraud on the court. The decision also conflicts with decisions of the First, Third and Fifth District Courts of Appeal which hold that dismissal for fraud on the court is proper if a Plaintiff gives false or misleading answers in sworn discovery pertaining to his claim.

ARGUMENT

THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL DIRECTLY AND EXPRESSLY CONFLICTS WITH A DECISION OF THIS COURT AND WITH DECISIONS OF THE FIRST, THIRD AND FIFTH DISTRICT COURTS OF APPEAL ON THE STANDARD OF REVIEW TO BE APPLIED BY AN APPELLATE COURT REVIEWING A TRIAL JUDGE'S DECISION TO DISMISS A CASE FOR FRAUD ON THE COURT

This court has discretionary jurisdiction to review a district court's decision which expressly and directly conflicts with a decision of another district court or this Court on the same issue of law. Art. V, Sec. 3(b)(3), Fla. Const. and Fla.R.App.P. 9.030(a)(2)(A)(iv). Decisional conflict may be created by the district court concerning legal principles appearing on the face of the decision or the misapplication of a specific holding previously announced by this Court. Rosen v. Florida Ins. Guar. Ass'n, 802 So.2d 291, 292 (Fla. 2001); Vest v. Travelers Ins. Co., 753 So.2d 1270, 1272 (Fla. 2000).

The Fourth District's decision should be reversed because it conflicts with a well established line of law from the First, Third and Fifth districts that hold that when a party lies in discovery about matters pertaining to his claim, dismissal of his case is proper. Baker v. Myers Tractor Servs., Inc., 765 So.2d 149 (Fla. 1st DCA 2000); Cox v. Burke, 706 So.2d 43 (Fla. 5th DCA 1998); Metropolitan Dade County v. Martinsen, 736 So.2d 794 (Fla. 3rd DCA 1999); Mendez v. Blanco, 665 So.2d 1149 (Fla. 3rd DCA 1995). Additionally, under the Fifth District Court of Appeals' Cox decision, misleading answers in discovery concerning central issues in a case justify dismissal of a plaintiff's case for fraud on the court.

In the case at bar, Plaintiff provided a false answer to a question concerning his physical ability after the accident. Plaintiff was asked in deposition whether he could get underneath a car. He unequivocally responded that he could not and then was caught on surveillance tape inserting his body underneath a

pickup truck and performing manual labor on the pickup truck for over two hours.² This was clearly a lie, under oath, concerning Plaintiff's damages (the back and knee injuries he allegedly suffered as a result of the accident).

Plaintiff testified that he could not lift any heavy weight and could not climb stairs without pain. Plaintiff also testified that he was disabled and that even though there were access ways into buildings he found it very hard to get into them. Plaintiff was caught on surveillance tape pulling a heavy motor onto his roof. Plaintiff's lifting the motor onto his roof shows that he was lying about his ability to lift heavy weight. Even more troubling is Plaintiff's statement under oath that he is disabled and finds it hard to get into buildings. Plaintiff was caught on surveillance tape and admitted to climbing up and down a ladder twice. Plaintiff's testimony on these issues was clearly designed to fool Hallandale and the fact finder concerning the scope and extent of his knee injuries, and, if not an outright lie, at least constitutes misleading testimony that warrants dismissal under Cox.

The Fourth District's decision also directly and expressly conflicts with this Court's decision concerning the standard to be applied by district courts³ in reviewing a trial judge's decision to dismiss a claim for fraud on the court. To justify reversal of a trial judge's decision, "it would have to be shown on appeal that the trial court clearly erred in its interpretation of the facts and the use of its judgment and not merely that the court, or another fact-finder, might have made a different factual determination." Mercer v. Raine, 443 So.2d 944, 946 (Fla. 1983); Leo's Gulf Liquors v. Lakhani, 802 So.2d 337, 338 (Fla. 3rd DCA 2001); Baker v. Myers Tractor Services, Inc., 765 So.2d 149, 150 (Fla. 1st DCA 2000).

In the case at bar, the Fourth District, in its opinion, acknowledged that Plaintiff lied under oath about the scope and extent of his injuries. However, the Fourth District went on to find that dismissal of Plaintiffs' claims was unwarranted as a jury should consider the effect of the discrepancies between the surveillance tape and Plaintiff's deposition testimony.

In Cox, the Fifth District succinctly summarized the proper role of an appellate court reviewing a dismissal for fraud on the court as follows:

² The Fourth District's opinion acknowledged the fact that the Plaintiff was shown on the video with his head and upper chest underneath a vehicle.

In this case, there is a good deal that Burke and Gordon (the beneficiaries of the trial court's dismissal) put forth as "fraud" that is either not fraud or unproven. . . Nevertheless, Cox has clearly been shown to have given many false or misleading answers in sworn discovery that either appear calculated to evade or stymie discovery on issues central to her case. The integrity of the civil litigation process depends on truthful disclosure of facts. A system that depends on an adversary's ability to uncover falsehoods is doomed to failure which is why this kind of conduct must be discouraged in the strongest possible way. Although Cox insists on her constitutional right to have her case heard, she can, by her own conduct, forfeit that right. This is an area where the trial court is and should be vested with discretion to fashion the apt remedy. While this court might have imposed a lesser sanction, the question in this case is close enough that we cannot declare that the lower court to have abused its discretion.

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In the case sub judice, since Hallandale showed that Plaintiff lied under oath and provided misleading testimony about matters pertaining to his claim, the trial judge could not have abused his discretion in dismissing Plaintiff's lawsuit. The Fourth District's decision in the case at bar improperly second guesses the trial judge and fails to properly apply the abuse of discretion standard in violation of this court's Mercer decision and in direct and express conflict with the standard enunciated by the Fifth District in Cox.

Important policy considerations also exist that warrant this Court's review of the Fourth District's decision. It is well known that insurers and self-insured entities throughout the State of Florida regularly utilize surveillance video in the litigation process. The Fourth District's decision would make it nearly impossible for an insurer or a self-insured municipality, such as Hallandale, to obtain a dismissal for fraud on the court based solely on a surveillance tape. Instead, taxpayer money would have to be spent in bringing a case to a jury because trial judges statewide would not be authorized to dismiss a case for fraud on the court solely based on a surveillance tape.

Previous decisions in Florida, including decisions of the Fourth District, have uniformly held that when a Plaintiff lies under oath about matters bearing directly on the issue of damages, dismissal is an appropriate sanction. Desimone v. Old Dominion Insurance Co., 740 So.2d 1233, 1234 (Fla. 4th DCA 1999). The Fourth District's decision in this case creates an unauthorized exception to the general rule of dismissals for fraud on the court and unduly restricts a trial judge's discretion to dismiss a case based upon a surveillance tape.

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Courts in other jurisdictions have considered whether it is proper for a trial judge to dismiss a plaintiff's claims when the plaintiff is caught lying about the scope and extent of his injuries on surveillance tape. In Pritt v. Suzuki Motor Co., 515 S.E. 2d 161 (W.Va. 1998), West Virginia's highest court upheld a decision in which the trial judge dismissed a case for fraud on the court. In the case, Pritt alleged that he was injured in an accident when he was riding an all-terrain vehicle manufactured by Suzuki. Like the Plaintiff in the case at bar, Pritt alleged that he suffered severe and permanent injuries as a result of the accident. Like Hallandale, Suzuki obtained surveillance tapes of Pritt showing him performing a variety of physical activities, including climbing up a slope, carrying a pump motor and lying in a boat while reaching underneath a dock. Id. at 164. Under these facts, West Virginia's highest court not only found it appropriate to dismiss Pritt's lawsuit for fraud on the court, but also found it appropriate to assess hundreds of thousands of dollars of attorneys' fees against him.

In Girard v. Courtyard by Marriott, 827 So.2d 578 (La.App. 3 Cir. 2002), an employee who was receiving workers' compensation benefits for a work related injury was captured on surveillance tape performing certain tasks that she testified she could not perform or could not perform without pain. Girard testified that she had suffered similar injuries to Amato. Id. at 581. The surveillance tape showed her performing tasks which were much less impressive than those performed by the Plaintiff in the case at bar. Id. at 582. Additionally, Girard had introduced evidence documenting her injuries by way of affidavits from third parties and medical reports. Notwithstanding all of this evidence, the appellate court upheld the trial court's decision dismissing Girard's claim for continued workers' compensation benefits solely based on the surveillance video.

CONCLUSION

The Petitioner, City of Hallandale, requests that the Court accept jurisdiction of this cause and quash the decision of the Fourth District Court of Appeal.

CERTIFICATE OF SERVICE

I certify that a copy hereof was mailed to Paul Kneski, Esquire, 19 W. Flagler St., Suite 807, Miami, Florida, on November 13, 2003.

Mark Goldstein

CERTIFICATION OF TYPE, SIZE AND STYLE

Petitioner certifies that this brief complies with Fla.R.App.P. 9.210(a). This brief is in 14 point proportionally spaced Times Roman font.

Mark Goldstein