

SUPREME COURT
STATE OF FLORIDA
TALLAHASSEE, FLORIDA

MARY KATHY POWERS,

Petitioner,

vs.

ORANGE COUNTY SCHOOL BOARD and
UNITED SELF INSURED SERVICES

AND

UNIVERSITY OF CENTRAL FLORIDA and
STATE OF FLORIDA, DIVISION OF RISK
MANAGEMENT,

Respondents.

CASE NO.: SC07-1271

Lwr Tribunal.: 1D06-69

PETITIONER'S INITIAL BRIEF ON JURISDICTION

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This is an Initial Brief on Jurisdiction seeking to invoke discretionary jurisdiction to review a decision of the First District Court of Appeal, Tallassee, Florida, opinion rendered June 13, 2007.

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PRELIMINARY STATEMENT

The Petitioner, MARY KATHY POWERS, shall be referred to herein as the "Claimant" or by her separate name.

The Respondents, ORANGE COUNTY SCHOOL BOARD and UNITED SELF INSURED SERVICES, shall be referred to herein as the "Employer/Carrier#1" (E/C#1) or as "ORANGE COUNTY".

The Respondents, UNIVERSITY OF CENTRAL FLORIDA and STATE OF FLORIDA, DIVISION OF RISK MANAGEMENT, shall be referred to herein as the "Employer/Carrier#2", (E/C#2) or as UCF.

References to the record on appeal shall be abbreviated by the letter "V" (Volume), followed by the applicable volume and page number.

The Judge of Compensation Claims shall be referred to as the JCC.

References to the appendix attached to Petitioner's Initial Brief on Jurisdiction will be referred to by the letters "AP" followed by the applicable appendix page number. The appendix contains the opinion issued by the First District Court of Appeal on June 13, 2007.

STATEMENT OF THE CASE AND STATEMENT OF THE FACTS

The Claimant, MARY KATHY POWERS, who had previously worked as a para-professional for the ORANGE COUNTY SCHOOL BOARD, elected, in April of 2003, to take an unpaid leave of absence to continue her studies, full time at UCF (V1-11,21, V3-556-558). This leave of absence was from August 1, 2003 to May 25, 2004 (V3-486).

To obtain her degree in education, the Claimant was required to successfully complete the UCF required course "Internship II" (V1-14,94). The purpose of the "Internship II" course is to give the students the hands-on experience of a classroom (V1-93,94).

The ORANGE COUNTY SCHOOL BOARD, respondents herein, has agreed to accept student interns from UCF and other Universities (V1-44, 45, 67). ORANGE COUNTY does not pay the student interns (V1-47). ORANGE COUNTY voluntarily accepts interns, in part, because an intern is a second pair of hands in the classroom and it assists with a teacher shortage (V1-67).

The Claimant was accepted by UCF in the "Internship II" course. Claimant was placed at Bonneville Elementary (V1-12). The Claimant was one of 250 to 300 student interns voluntarily accepted by ORANGE COUNTY from UCF (V1-67).

While participating as an intern, the Claimant is supervised about 80% of the time by her supervising teacher, who

is an ORANGE COUNTY teacher, and 20% of the time by the university coordinator from UCF (V1-85-87).

During her internship, the Claimant did not receive any pay or reimbursement of expenses from UCF (V1-27,31). Claimant's completion of the internship with ORANGE COUNTY allowed her to obtain her education degree (V1-14,15).

On March 23, 2004, while participating in the Internship II program at Bonneville Elementary, the Claimant was injured when a student ran up behind her and shoved her into a wall (V1-15). On the date of her accident, Claimant was enrolled as a full time student at the UNIVERSITY OF CENTRAL FLORIDA (V1-15,95), pursuing a degree in education from UCF to obtain her teaching certificate (V1-11).

Claimant reported the incident to the office, at which time a visitor accident/incident report was prepared (V1-15, 16, V3-474). Claimant inquired about medical treatment and was advised by the office that ORANGE COUNTY was not responsible and that Claimant should contact the UNIVERSITY OF CENTRAL FLORIDA (V1-15).

Claimant contacted the UNIVERSITY OF CENTRAL FLORIDA and was advised that the UNIVERSITY OF CENTRAL FLORIDA was not responsible for her injuries (V1-17,96,122).

The Claimant then sought medical treatment from Parish Medical Center in Titusville, Brevard County, Florida (V1-17,

V2-278-288). Thereafter, on May 26, 2004, Claimant came under the care of Dr. Joseph Terranova, chiropractic physician (V1-17, 27, 28, V2-239). Dr. Terranova treated the Claimant through March 30, 2005 (V2-242,243).

Thereafter, Claimant filed a Petition for Benefits against the respondent, ORANGE COUNTY (V1-1). The UNIVERSITY OF CENTRAL FLORIDA is involved in this claim as a result of a Notice of Controversy between carriers, which was filed on behalf of ORANGE COUNTY (V1-1, V4-639, 640).

On December 6, 2005, the JCC entered a Final Compensation Order where the JCC found the Claimant received remuneration or valuable consideration from the ORANGE COUNTY SCHOOL BOARD even though Claimant received no monetary remuneration because the internship was required in order for the Claimant to obtain her degree in education (V4-705). The JCC concluded, based on Hallal v. RDV Sports Inc., 682 So.2d 1235(Fla.5th DCA 1996), and F.S.1012.39(3)(2003) that the ORANGE COUNTY SCHOOL BOARD acted as the employer in this case and is therefore liable for the furnishing of the appropriate workers' compensation benefits to the Claimant (V4-90).

On June 13, 2007 the First District Court of Appeal entered an opinion reversing the JCC's finding that the Claimant was an employee of the ORANGE COUNTY SCHOOL BOARD (AP-1-5), In reversing the JCC, the First District Court of Appeal rejected

the JCC's interpretation of the definition of "employee" (AP-3). The First DCA found that, although the Claimant obviously received a benefit from the internship because it was required to obtain her degree, the Claimant was merely a full time student of UCF who was participating in a course entitled "Internship II" (AP-3). The First DCA held that education received in exchange for payment of tuition is not remuneration for purposes of section 440.02(15)(a), Florida Statutes (AP-4).

The First DCA also stated that this case was of one of particular importance as it determines whether the numerous post secondary education level students participating in internships throughout the State are "employees" eligible for workers' compensation benefits (AP-5).

POINT ON APPEAL

POINT I

WHETHER OR NOT THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THE CASE AT BAR EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN HALLAL V. RDV SPORTS INC., 682 So.2d 1235(Fla.5th DCA 1996).

SUMMARY OF ARGUMENT

I

Petitioner respectfully submits that the opinion rendered by the First DCA in the case at bar expressly and directly conflicts with the decision of Fifth District Court of Appeal in Hallal v. RDV Sports Inc., 682 So.2d 1235(Fla.5th DCA 1996). In

Hallal v. RDV Sports Inc., Supra, the 5th DCA found the Plaintiff, Hallal, who was a student intern with the Defendant, was an "employee" for purposes of workers' compensation, because the Plaintiff's participation in the internship program with the defendant constituted valuable consideration in that such participation was necessary in order for the Plaintiff to satisfy the requirements of his Bachelors Degree in sports management. As a result, the 5th DCA upheld the dismissal of Plaintiff's personal injury claim against the defendant on the grounds that workers' compensation was the Plaintiff's sole remedy against the defendant.

Claimant respectfully submits that the opinion of the First DCA in the case at bar expressly and directly conflicts with the decision of the Fifth DCA in Hallal v. RDV Sports Inc., Supra.

ARGUMENT

POINT I

WHETHER OR NOT THE DECISION OF THE FIRST DISTRICT COURT OF APPEAL IN THE CASE AT BAR EXPRESSLY AND DIRECTLY CONFLICTS WITH THE DECISION OF THE FIFTH DISTRICT COURT OF APPEAL IN HALLAL V. RDV SPORTS INC., 682 So.2d 1235(Fla.5th DCA 1996).

Article V, Section 3(b)(3), Fla. Const. and Fla.R.App.P. 9.030(a)(2)(A)(iv) provides that the jurisdiction of this Honorable Court may be invoked to review any decision of a District Court of Appeal that:

“. . .Expressly or directly conflicts with a decision of another District Court of Appeal or of the Supreme Court on the same question of law.”

Jurisdiction of this Honorable Court on a notice to invoke discretionary jurisdiction based upon a conflict depends on whether the conflict between decisions below is express and direct and not whether the conflict is inherent or implied, Department of Health and Rehabilitative Services v. National Adoption Counseling Service Inc., 498 So.2d 888(Fla. 1986). For purposes of determining conflict jurisdiction, this Honorable Court is limited to the facts which appear on the face of the opinion, Hardee v. State, 534 So.2d 706(Fla.1988). Review based on conflict is unavailable where the opinion below establishes no point of law contrary to a decision of this Honorable Court or another District Court of Appeal, Curry v. State, 682 So.2d 1091(Fla.1996), First Union National Bank v. Turney, 832 So.2d 768(Fla.1st DCA 2002).

F.S.440.02(15)(a)(2003) provides as follows:

“(15)(a) ‘Employee’ means any person who receives remuneration from an employer for the performance of any work or service while engaged in any employment under any appointment or contract for hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed, and includes, but is not limited to, aliens and minors.”

In the case at bar, the Claimant was a full time student at UCF at the time of her compensable accident on 3/23/04 (V1-15,95). However, at the time of Claimant’s accident on 3/23/04,

Claimant was an intern for the respondent, ORANGE COUNTY SCHOOL BOARD, working as a student teacher on the premises of an Orange County elementary school (V1-15,32).

In order for Claimant to obtain her degree in education, the Claimant was required to successfully complete the UCF required course "Internship II" (V1-14,94).

The JCC, in his 12/6/05 order finding that the Claimant was an employee of the ORANGE COUNTY SCHOOL BOARD, and as such entitled to workers' compensation benefits from the ORANGE COUNTY SCHOOL BOARD, specifically found as follows:

"I find that Ms. Powers received remuneration or (valuable consideration) from OCPS based on her participation in the internship program even though Ms. Powers had received no monetary remuneration. The Legislature's use of the term 'remuneration' and not the term 'wages' or 'monetary remuneration' further supports this finding." (V4-705).

In its June 13, 2007 opinion reversing the JCC's 12/6/05 order finding that Claimant was an employee, the First DCA stated:

"We reject the Judge of Compensation Claims interpretation of the definition 'employee'. Although the Claimant obviously received a benefit from the internship because it was required to obtain her degree, the Claimant was merely a full time student of UCF who was participating in a course entitled 'Internship II'. Education received in exchange for payment of tuition is not remuneration for purposes of Section 440.02(15)(a) Florida Statutes." (AP-3,4).

The above referenced ruling by the First District Court of Appeal expressly and directly conflicts with the decision of the

Fifth District Court of Appeal in Hallal v. RDV Sports Inc., 682 So.2d 1235(Fla.5th DCA 1996). In Hallal v. RDV Sports Inc., *Supra*, the Appellant, Hallal, appealed a Final Summary Judgment entered in favor of RDV Sports Inc. and the Orlando Magic LTD which determined that workers' compensation was Mr. Hallal's sole remedy for recovering the expenses he incurred as a result of personal injuries sustained while working for the Magic. The Fifth DCA found the Trial Court properly concluded that Mr. Hallal was an "employee" under the Florida Workers' Compensation Act when he was injured and the Fifth DCA affirmed the Trial Court's ruling.

Mr. Hallal was attending the University of Massachusetts as a full time student, pursuing a Bachelors Degree in Sports Management. In the Spring of 1994, Mr. Hallal was selected for an internship with the marketing office of the Magic. Shortly after beginning work with the Magic, Mr. Hallal was injured. He filed suit against the Magic for negligent maintenance of its premises. The Magic moved for summary judgment, asserting it was immune from tort liability under the Florida Workers' Compensation Law.

The record establishes that interns with the Magic are required to attend all Magic home basketball games, and in exchange therefore, are paid \$25 per game. Mr. Hallal attended ten home games and was paid a total \$250. The Fifth DCA found

that such payment constituted remuneration and as such the Plaintiff was an employee of the Magic.

However, the Fifth DCA further stated as follows:

"Moreover, even if no monetary remuneration had been received by Mr. Hallal, summary judgment would have been appropriate in this case because Mr. Hallal's participation in the internship program constituted valuable consideration in that such participation was necessary in order for him to satisfy the requirements of his degree. . . ." Hallal v. RDV Sports Inc., Supra at 1235.

Petitioner respectfully notes that the First DCA, in rendering its opinion in the case at bar, makes no mention of Hallal v. RDV Sports Inc., Supra, even though it was heavily relied upon by Claimant, in her brief, in oral argument before the First DCA, and by the UNIVERSITY OF CENTRAL FLORIDA in their Answer Brief. Both Claimant, and the UNIVERSITY OF CENTRAL FLORIDA contended that Hallal v. RDV Sports Inc., Supra, was directly on point with the case at bar, in that it dealt with a student intern participating in an internship program, which was required in order for the Claimant to satisfy the requirements of his Bachelors Degree.

Petitioner would also note that the first DCA recognized the importance of this case. Specifically the First DCA stated in its 6/13/07 opinion:

". . . This case is one of particular importance as it determines whether numerous post secondary education level students participating in internship throughout the State are 'employees' eligible for workers' compensation benefits. . ." (AP-5).

CONCLUSION

Since the First DCA's 6/13/07 opinion expressly and directly conflicts with the Fifth DCA's decision in Hallal v. RDV Sports Inc., Supra, Petitioner respectfully requests that this Honorable Court grant Petitioner's Notice to Invoke Discretionary Jurisdiction and accept jurisdiction of this appeal.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by regular U.S. Mail on this _____ day of July, 2007 to: Debra L. Zeitler and Thomas A. Moore, Post Office Box 536636, Orlando, Florida 32853-6636, William H. Lore, 1201 South Orlando Avenue, Winter Park, Florida 32789-7107, Michael Nebel, 790 North Orange Avenue, Orlando, Florida 32801.

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CERTIFICATE OF TYPE FACE COMPLIANCE

I HEREBY CERTIFY that this Initial Brief on Jurisdiction for Petitioner was computer generated using Courier New twelve font on Microsoft Word, and hereby complies with the font standards as required by Fla.R.App.P 9.210 for computer-generated briefs.

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APPENDIX

APPENDIX

AP-1-5 Opinion of First District Court of Appeal dated June
13, 2007.