

SUPREME COURT OF FLORIDA

SC 09-1810
4DCA CASE NO.: 4D07-4170
CASE NO.: 2004CA001645 AB

PROFESSIONAL
MEDICAL EDUCATION, INC.,

Petitioner,

vs.

PALM BEACH COUNTY HEALTH
CARE DISTRICT
and
JEFF DAVIS,

Respondents.

PETITIONER'S *AMENDED* JURISDICTIONAL BRIEF

Respectfully submitted,

GARCIA LAW FIRM, P.A.
224 Datura Street, Suite 900
West Palm Beach, Florida 33401
(561) 832-7732
(561) 832-7137 (telecopier)
E-mail: isidrogarcia@bellsouth.net

BY: ISIDRO M. GARCIA
Florida Bar No. 437883

TABLE OF CONTENTS

Table of Citations	ii
Statement of the Case and Facts	1
Summary of the argument.....	4
Argument	
<i>First issue:</i> Does the Opinion of the Fourth District expressly and directly conflict with the decisions of the First District on the defenses of privilege and justification?.....	5
<i>Second issue:</i> Does the Opinion of the Fourth District expressly and directly conflict with the decisions of this Court that recognize a cause of action for civil conspiracy even in the absence of an underlying tort?.....	9
<i>Third issue:</i> Does the Opinion of the Fourth District expressly and directly conflict with the decision of the First District on the issue of absolute immunity?	10
Conclusion	10
Certificate of compliance	11
Certificate of service	11

TABLE OF CITATIONS

Cases:

Abele v. Sawyer, 750 So. 2d 70 (Fla. 4th DCA 1999) 8

Albritten v. Gandy, 531 So. 2d 381 (Fla. 1st DCA 1988) 10

American National Title & Escrow of Florida, Inc. v. The Guarantee Title & Trust Company, 81

Churraca v. Miami Jai-Alai, Inc., 353 So. 2d 547 (Fla. 1977) 9

City of Stuart v. Monds, 10 So. 3d 1134 (Fla. 4th DCA 2009), *pet. for review pending. filed August 7, 2009* (SC09-1499) 10

Execu-Tech Business Systems, Inc.
.....v. New Oji Paper Company Ltd., 752 So. 2d 582 (Fla. 2000) 9

Laskey v. Smith, 239 So. 2d 13 (Fla. 1970) 8

McGhee v. Volusia County, 679 So. 2d 729 (Fla. 1996) 4

Peacock v. General Motors Acceptance Corporation, 432 So. 2d 142
.....(Fla. 1st DCA 1983) 6, 7, 8

Scheller v. American Medical International, Inc.,
..... 502 So. 2d 1268 (Fla 4th DCA 1987) 7

Snipes v. West Flagler Kennel Club, Inc.,
..... 105 So. 2d 164 (Fla. 1958) 9

State Farm Mut. Auto Ins. Co. v. Austin Outdoor, Inc.,
..... 918 So. 2d 446 (Fla. 4th DCA 2006) 1

Wells Fargo Services, Inc. v. Lehman, 799 So. 2d 252
..... (Fla. 3rd DCA 2001) 8

Constitutional provisions:

U.S. Const., Art. 7.....9
Art. I, § 22, Fla. Const.9

Statutes:

§768.28(9)(a), Fla. Stat. 4

Rules of court:

Rule 9.210 (a)(2), Florida Rules of Appellate Procedure 11

STATEMENT OF THE CASE AND FACTS

Petitioner Professional Medical Education, Inc. (“PME”) is an educational for profit Florida corporation that provides training for health care professionals such as EMTs, paramedics, firefighters, nurses and trauma surgeons. Respondents, Defendants below, the Palm Beach County Health Care District (“District”) and Dr. Jeff Davis, its medical director, sought to and did interfere with PME’s business relations with third parties, including an organization named BTLS of Florida, Inc., Palm Beach County Fire Rescue and the City of Greenacres; this interference caused damages to PME because BTLS suspended PME for a period of 51 days, and Fire Rescue and Greenacres canceled verbal agreements they both had reached with PME, all directly as a result of Davis’ actions.

The evidence must be viewed in the light most favorable to the prevailing party at trial ¹ (PME). PME provides training for firefighters, and other courses that were to follow. It was a substantial amount of business for the fledgling company, amounting to \$110,000 per year based on the agreed upon rate of \$100 per Fire Rescue employee. In addition, PME was selected by the City of Greenacres, to provide similar training to a substantially smaller force of employees.

1

The evidence showed that as a result of the selection of PME by Palm Beach County Fire Rescue the District, resulted in near catastrophic events to PME. First, Soard, Duff and Davis, acting in concert with one another, and by means of correspondence and telephonic communications, managed to suspend the ability of PME to put on BTLS courses. More specifically, as a result of false allegations made by Davis, Soard and Duff, to wit, that PME was being investigated for “fraud” by the District and/or Palm Beach County, BTLS entered an emergency suspension of PME’s license and authority to conduct BTLS sponsored courses, effectively ending the agreements PME had secured to provide these courses to Fire Rescue and Greenacres.

PME retained counsel which, after 51 days of suspension, was able to persuade BTLS that there of its Board members to conduct an investigation of the allegations made by Davis, Soard and Duff, PME was cleared of wrongdoing and was again eligible to fulfill its agreement with Fire Rescue and Greenacres.

Having been foiled in his first attempt to interfere with PME’s business dealings with third parties, they would have to select another vendor, *not* PME. Davis was in a unique position to dictate terms to these third parties, as the District had taxpayer funds at

its disposal to pay for medical training of employees of local governmental agencies in Palm Beach County, including employees of Fire Rescue and Greenacres. Although in the past these independent agencies had been permitted to choose their own vendor without interference by the District or Davis, Young, PME's principal, was informed by representatives of these agencies that Davis was threatening to withhold payment for these funds if they persisted in using PME, so they were no longer going to be able to use Young's company. As a result, the business was redirected to Young's competitors.

A Palm Beach County jury, following a three (3) week trial, found in favor of PME on all claims. The trial court judge, the Hon. Jonathan Gerber, denied the District's post trial motions. Following the denial of the District's post trial motions, an appeal to the Fourth District Court of Appeals ensued by the District. There was a cross appeal by PME seeking review of the grant of a directed verdict for Davis. A panel of the Fourth District held that *all* of PME's claims failed because the District was "justified" in interfering with PME's business relationships, presumably as a matter of law, and

⁴ The trial court, Hon. Judge Jonathan Gerber, granted Davis a directed verdict on all claims, finding as a matter of course and scope of his employment is, this Court has said, a question for the jury. McGhee v. Volusia County, 679 So. 2d 729, 733 (Fla. 1996). This claim was cross appealed by PME, but the Fourth District Court of Appeals did not address the issue.

because the District could not interfere with the business relations PME had established since payment to the third parties would come from the District. Moreover, said the Fourth District, all claims were barred by the doctrine of “absolute immunity.” Slip Opinion, p. 1 in **Appendix 1**. For the “conspiracy” claim, the Fourth District held that since the underlying tort claims failed, there could not be a conspiracy claim and that this case did not fall into the independent conspiracy tort theory exception, that does not require an underlying tort, a theory specifically relied upon by PME at trial and in defending the verdict on appeal. Slip Opinion, p. 7. The Fourth District did not address the cross appeal by PME which had questioned the propriety of granting Davis a directed verdict on all claims.

SUMMARY OF THE ARGUMENT

The Panel Opinion of the Fourth District expressly and directly conflicts with the prior decision regarding the “justification” defense and the unprecedented extension of the “absolute privilege” (also called “absolute immunity”) doctrine, from claims of defamation to claims for tortious interference. In addition, the Fourth District Panel failed to follow a civil conspiracy theory, relied upon by PME, to affirm the conspiracy claim. Because of these direct and express conflicts, and the extraordinary usurpation by the Fourth District panel’s of the jury’s function as fact finder in a trial, it is respectfully requested that this Court accept jurisdiction of this case to resolve conflicts created

by this Opinion.

ARGUMENT

nt 1.

The Fourth District Panel

The absolutist premise behind the panel Opinion’s statement of the law (a defendant not a stranger) is directly contrary to a decision of the First District Court of Appeals on the same issue. Moreover, the decisions directly conflict on a second issue: privilege to interfere.

In Peacock v. General Motors Acceptance Corporation, 432 So. 2d 142 (Fla. 1st DCA 1983), a plaintiff was claiming tortious interference with a relationship the dealer had enjoyed with GMAC’s parent company, General Motors (GM). The trial court had dismissed the claim based on the corporate relationship of GMAC and GM, and, based on the “privilege” to act created by GMAC’s financing agreement with the dealer. The First District Court reversed a dismissal of the claims:

We reject GMAC's reasoning and hold that *GMAC's subsidiary relationship to GM does not in itself negate the possibility of GMAC's having intentionally interfered with Peacock's and Peacock Chevrolet's business relationships with GM*. GMAC is a distinct legal entity, and its being a wholly owned subsidiary of GM does not alter that status...

Neither can we accept GMAC's next argument, to the effect that the counterclaim shows on its face that GMAC is privileged to act as it allegedly did because of rights secured by GMAC's financing agreements with Peacock Chevrolet. ***GMAC's privilege to protect its contractual interests is not absolute but is instead conditioned upon its employing means that are not improper.***

Id., 143-45 (citations omitted, emphasis added).

The foregoing decision expressly and directly conflicts with the Panel Opinion here on two points: the absolutist approach of Judge Gross in this case, on the *means* of when interference is permissible.

The Panel Opinion in this case concluding that “[t]he recovery on the tortious interference claim holds that the issue of “justification” is a *matter of proof*, not a legal decision for a court to make: “Whether the plaintiff must *prove* lack of justification or the defendant must *prove* justification is an unsettled issue in Florida.” Peacock, *supra*, 432 So. 2d 142, 144 n. 1 (Fla. 1st DCA 1983) (Emphasis added, citations omitted). Regardless of whether “justification” is classified as an element of the claim, as the Fourth District did here, or as an affirmative defense, as it has said

⁶ The Fourth District Panel Opinion even strays from said Court’s own precedent, where the very argument advanced in Scheller v. American Medical International, Inc., 502 So. 2d 1268 (Fla. 4th DCA 1987) is rejected in Scheller v. American Medical International, Inc., 502 So. 2d 1268 (Fla. 4th DCA 1987).

previously⁷, “justification” is an *issue of fact for a jury*, not a legal issue a court can decide in a vacuum devoid of facts, as the Fourth District purported to do here. In this case, the Fourth District panel simply substituted its view of the facts for a factual decision that under our system of law is for a jury to make. To overturn a jury’s determination on what is purely a factual issue, the Fourth District would have had to first determine that there was *absolutely no evidence to support the jury’s verdict that the interference was in fact not justified*.⁸ The extraordinary usurpation of the jury’s power to determine facts is contrary to well established Florida law⁹, which protects the right of a party to a jury trial, an express guarantee of the Constitution of the United States¹⁰ and the Constitution of the State of Florida.¹¹

**nt 2.The Fourth District
Court that recognize a civil conspiracy cause of**

Op

⁷ A member of the same panel who decided this case, Judge Warner, previously recognized that “[j]ustification of the agreement on behalf of Commerce Park.” Abele v. Sawyer, 750 So. 2d 70 (Fla. 4th DCA 1999).

⁸

⁹

¹⁰

¹¹

action without an independent, underlying tort.

Without saying why, the Fourth District made short shrift of a theory advanced by PME at trial based on Snipes v. West Flagler Kennel Club, Inc., 105 So. 2d 164 (Fla. 1958), where this Court held that a group of track operators who denied a Plaintiff the opportunity to race his dogs on their tracks for the purpose of driving him out of the dog racing business could be found liable for civil conspiracy, even if there was no underlying independent tort, because of the power held by the interfering entities.¹² Given this was a theory advanced by the Plaintiff at trial, the Fourth District's failure to affirm the verdict rendered for PME on the conspiracy claim, with no legal or factual basis for doing so, is expressly and directly contrary to the above cited decisions of this Court.

**Point 3.The
Opinion**

exp

**conflicts
the**

**with
First**

As an alternative basis for its Opinion, the panel also relied upon a recent case of the Fourth

¹² A civil conspiracy can itself be actionable without an independent underlying tort. Execu-Tech Business (lack of viable underlying tort) the Fourth District Panel had for reversing the jury's verdict on the conspiracy claim.

law, never applied in Florida, that extends the doctrine of absolute privilege¹³ from defamation claims and applies it to tortious interference claims. Slip Opinion, p. 6 n.

2. This new case, is in direct and express conflict with the decision of the First District Court of Appeals in the case of Albritten v. Gandy, 531 So. 2d 381 (Fla. 1st DCA 1988), which holds, squarely to the contrary, that absolute privilege does *not* apply to tortious interference claims.

CONCLUSION

The Fourth District Opinion expressly and directly conflicts with the decisions of the First District and of this Court, as set forth above, and this Court should accept jurisdiction of this case to resolve the conflicts created by said Opinion.

CERTIFICATE OF COMPLIANCE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served **VIA REGULAR MAIL** to Robert Rivas, SACHS & SAX, 310 West College Avenue, 3rd Floor, Tallahassee, Tallahassee, Florida 32301-1406.

BY: _____