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IN THE SUPREME COURT OF FLORIDA

MARTIN-JOHNSON, INC.,

Petitioner,

vs.

TOMMIE SAVAGE,

Respondent.

CASE NO. 68,832
FIRST DISTRICT COURT OF
APPEAL NO. BM-150

RESPONDENT'S ANSWER BRIEF

J. NIXON DANIEL, III and
JEFFREY A. STONE of
BEGGS & LANE
Post Office Box 12950
(700 Blount Building)
Pensacola, FL 32576-2950
(904) 432-2451

Attorneys for Respondent

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INTRODUCTORY NOTE

The Petitioner has properly identified the parties in the introductory note to its initial brief on the merits. Respondent adopts the nomenclature set forth in Petitioner's introductory note.

STATEMENT OF THE CASE AND OF THE FACTS

The Respondent does not quarrel with the statement of the case and of the facts contained in Petitioner's initial brief on the merits.

SUMMARY OF ARGUMENT

Neither the decision of the First District Court of Appeal nor that of the Circuit Court below is in error. Refusal to review an interlocutory order by certiorari is proper where, as in the instant case, there is an adequate remedy on appeal once final disposition of the cause has occurred. In addition, the original order for which review is sought is not a clear departure from the essential requirements of law in that Respondent has pleaded sufficient facts to raise a cause of action for a statutory, intentional tort with the requisite mental state to support an award for punitive damages.

ARGUMENT

POINT I

THE FIRST DISTRICT COURT OF APPEAL PROPERLY DECLINED TO REVIEW BY CERTIORARI THE ORDER OF THE CIRCUIT COURT DATED MARCH 27, 1986.

The First District Court of Appeal properly exercised its discretion in declining to review the circuit court's order denying Petitioner's motion to strike the claim for punitive damages contained in Respondent's complaint below. Contrary to the rulings of the Fifth District Court of Appeal cited by Petitioner, an adequate remedy on appeal does exist. The type of discovery to which Petitioner is subjected by virtue of the claim for punitive damages is not such to justify the granting of certiorari review.

Although certiorari can be an appropriate vehicle for testing correctness of an order governing discovery procedures, it should only be granted where the order of the trial court is a departure from the essential requirements of law, and where there would be no adequate remedy by appeal upon final judgment. See Greyhound Lines, Inc. v. Jackson, 445 So.2d 1107 (Fla. 4th DCA 1984); Florida Cypress Gardens, Inc. v. Murphy, 471 So.2d 203 (Fla. 2d DCA 1985). In Greyhound, the discovery request was found to be unduly burdensome and oppressive, and there was no showing of necessity justifying such discovery. In Florida Cypress Gardens,

Inc., the request related to privileged matters. The harm in these discovery requests was caused by the actual process of answering or by the contemplated adverse use of privileged matters. Clearly, the harm in those situations cannot be adequately remedied on appeal of a final order.

An inquiry into the financial resources of the defendant in a case where punitive damages have been claimed does not subject the defendant to the same type of harm as an inquiry into matters subject to the work product privilege or the attorney-client privilege. The information gained through a discovery of a defendant's financial resources does not adversely impact the defense of the original lawsuit on the merits. Thus, the instant case significantly differs from the situation involving privileged matters dealing with the primary liability issues which were sought to be discovered in Florida Cypress Gardens, Inc. v. Murphy, 471 So.2d 203 (Fla. 2d DCA 1985).

Petitioner concedes that a claim for punitive damages may properly be asserted in a cause of action brought pursuant to Section 440.205 of the Florida Statutes. The discovery requests made in the case before this Court are not unduly burdensome or oppressive. The material requested consists of materials previously prepared in the normal course of the petitioner's business. (A7-8) The harm which was to be avoided by certiorari review in Greyhound Lines, Inc. v. Jackson, 445 So.2d 1107 (Fla. 4th DCA 1984) simply does not exist in the instant case.

This case also differs from those cases reviewed by the Fifth District Court of Appeal in either Sunrise Olds-Toyota, Inc. v. Monroe, 476 So.2d 240 (Fla. 5th DCA 1985) or Jaimot v. Media Leasing Corp., 457 So.2d 529 (Fla. 5th DCA 1984). The Sunrise Olds-Toyota case involved a claim for a negligent tort while the Jaimot case involved a claim for breach of contract. The law is clear that punitive damages cannot be recovered due to mere negligent conduct; additional facts must be shown to justify a punitive damage claim. See U.S. Concrete Pipe Co. v. Bould, 437 So.2d 1061, 1064 (Fla. 1983). It is also clear that a breach of contract will not support a claim for punitive damages unless the complained of acts also constitute a separate tort. Griffith v. Shamrock Village, Inc., 94 So.2d 854, 858 (Fla. 1957). Southern Bell Telephone and Telegraph Company v. Hanft, 436 So.2d 40, 42 (Fla. 1983). Unlike the instant case, neither Sunrise Olds-Toyota, Inc. or Jaimot involved a statutory cause of action or an intentional tort. The instant case involves both. Thus, there is no direct conflict with those decisions of the Fifth District Court of Appeal.

The actual assessment of punitive damages is the primary harm which may be caused by allowing a claim for punitive damages to survive a motion to strike. Clearly such harm can be adequately remedied on appeal of a final order of judgment. The type of harm addressed in discovery cases reviewed by certiorari does not exist in this case and, therefore, certiorari was properly denied.

POINT II

THE CIRCUIT COURT DID NOT DEPART FROM THE
ESSENTIAL REQUIREMENTS OF LAW WHEN IT DECLINFD
TO STRIKE RESPONDENT'S DEMAND FOR PUNITIVE
DAMAGES FROM THE COMPLAINT.

As an initial threshold, common-law certiorari should be granted to review nonfinal orders only when it has been clearly shown that the essential requirements of the law have been violated by the lower court's order. In the Interest of J.S., 404 So.2d 1144, 1145 n.2 (Fla. 5th DCA 1981). The cases cited in the Petitioner's brief do not clearly show the trial court's order to be a departure from the essential requirements of law. None of the cases cited involved, as here, a statutory cause of action for an intentional tort.

When viewed in the light most favorable to the Respondent, the allegations of the complaint place the Petitioner on notice that he is charged with having dismissed the Respondent from employment after the Respondent made an attempt to claim benefits to which he was entitled under Chapter 440 of the Florida Statutes. The Respondent's attempt to obtain medical treatment among other benefits under the Worker's Compensation Act followed an accident arising out of and in the course of his employment. The firing of the Respondent occurred because of his attempt to claim benefits and, therefore, necessarily occurred with knowledge of the Respondent's attempt to assert his rights under the

statute. The further allegation is that the defendant did so willfully and with malicious disregard for the rights of the Respondent under the statutes of the State of Florida.

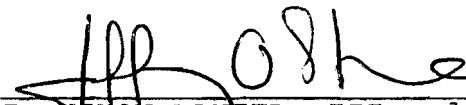
The question in this case quite simply is what more can the Respondent allege in his Complaint in order to justify a claim for punitive damages which the Petitioner concedes can be appropriate under Section 440.205. Nothing more can be alleged nor should anything more be required to be alleged. To declare otherwise would frustrate the public policy of this state to preclude the retaliatory discharge of workers who attempt to assert their rights under the worker's compensation act. Smith v. Piezo Technology, 427 So.2d 182 (Fla. 1983).

Petitioner has failed to demonstrate that the requirements of the law have been violated by the pleadings in this case. The pleadings are sufficient to place the Petitioner on notice of the claims against it. They are consistent with good pleading practice and have properly survived Petitioner's motion to strike.

CONCLUSION

The lower court Order of March 27, 1986, is not a clear departure from the essential requirements of law. Regardless, the Petitioner has not and cannot show that it will suffer irreparable harm despite the right of subsequent appeal at a later date. The First District Court of Appeal properly exercised its discretion by declining to review by certiorari the lower court's order. The opinion of the First District Court of Appeal is not erroneous and should, therefore, be affirmed.

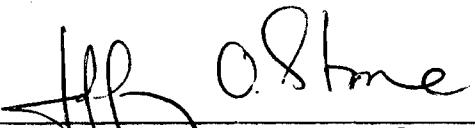
Respectfully submitted,



J. NIXON DANIEL, III and
JEFFREY A. STONE of
BEGGS & LANE
Post Office Box 12950
(700 Blount Building)
Pensacola, FL 32576-2950
(904) 432-2451
Attorneys for Respondent

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished by regular U.S. Mail to Gordon D. Cherr, Esq., P.O. Drawer 229, Tallahassee, Florida 32302, this 10th day of July, 1986.



J. NIXON DANIEL, III and
JEFFREY A. STONE of
BEGGS & LANE
P.O. Box 12950
(700 Blount Building)
Pensacola, FL 32576-2950
(904) 432-2451
Attorneys for Respondent