

IN THE SUPREME COURT OF FLORIDA

LOUIS GERENTINE and MICHAEL
GERENTINE, as Personal Repre-
sentatives of the Estate of SHIRLEY
ANN GERENTINE, deceased,

CASE NO. 70,200
APPEAL NO. 86-817

Plaintiffs/Petitioners,

-vs-

ROBERT McCOMB, PHILLIP GOODWIN,
LOUIS HUNTLEY and WILLIAM HUNTLEY,

Defendants/Respondents.

APR 20 1987
THE COURT
Clerk

PETITIONERS' BRIEF ON JURISDICTION

MEL R. MARTINEZ
CONNOR & MARTINEZ
Post Office Box 2447
Orlando, Florida 32802
305/849-1061
Attorney for Plaintiffs/
Petitioners

TABLE OF CONTENTS

	<u>PAGE</u>
Table of Cases.	3
Statement of the Case and Facts	4
Issue	5
Summary of Argument	6
Argument.	7, 8
Conclusion.	9
Certificate of Service.	9
Appendix.	10

TABLE OF CASES

	<u>PAGE</u>
<u>Dessert v. Electric Mutual Liability Insurance Company, 392 So.2d 340 (Fla. 5th DCA 1981)</u>	7
<u>Kaplan v. Circuit Court of Tenth Judicial Circuit, 495 So.2d 231 (Fla. 2d DCA 1986)</u>	7, 8
<u>Sullivan v. Streeter, 485 So.2d 893 (Fla. 4th DCA 1986).</u>	6, 7, 8
<u>Florida Statutes</u>	
Section 440.11 (1) Fla. Stat. (1983).	8

STATEMENT OF THE CASE AND FACTS

This is a wrongful death case. It arises from the abduction and murder of Shirley Ann Gerentine on September 14, 1983. At that time, she was working alone as a clerk at a Huntley's Jiffy Food Store, Store No. 137, in Orlando, Orange County, Florida. The duly appointed personal representatives of the Estate filed suit against Robert McComb, Phillip Goodwin, Louis Huntley and William Huntley. Mr. McComb and Mr. Goodwin were Shirley Ann Gerentine's immediate supervisors. Louis Huntley and William Huntley were the President and Secretary of Huntley Jiffy Food Stores, Inc., the corporation which owns such convenience stores throughout Florida. Both Louis Huntley and William Huntley retain an active role in the supervision and management of operations at all of their stores in the chain, including Store No. 137. Shirley Ann Gerentine was an employee of Huntley's Jiffy Food Stores, Inc. Her death arose in the course and scope of her employment. Her surviving spouse has received workers' compensation benefits. (R. 27-28)

This case is before this court after the trial court dismissed the Second Amended Complaint with prejudice for failure to state a cause of action with respect to Defendants, McComb, Goodwin, William Huntley and Louis Huntley.

Appeal was taken to the District Court of Appeal of the State of Florida, Fifth District. On February 26, 1987, said court affirmed the decision of the Circuit Court. (Appendix p. 1)

ISSUE ON JURISDICTION

WHETHER THE COURT SHOULD EXERCISE ITS DISCRETIONARY
JURISDICTION IN THIS CASE BY VIRTUE OF ARTICLE V, SECTION
3(b)(4) OF THE FLORIDA CONSTITUTION.

SUMMARY OF ARGUMENT

This Court has jurisdiction based upon Article V, Section 3(b)(4) of the Florida Constitution. The District Court of Appeal of the State of Florida, Fifth District, in its opinion of February 26, 1987, clearly indicated the existence of a conflict between the decision in this case and the holding of a sister court in the case of Sullivan v. Streeter, 485 So.2d 493 (Fla. 4th DCA 1986). Further, the Sullivan case is presently pending before the Court.

The Sullivan case will clearly touch upon the same issues that are raised in this appeal. As certified by the District Court of Appeal, the State of Florida, Fourth District, in the Sullivan case, this is a question of great public importance. The Supreme Court should take jurisdiction in this case and resolve the existing conflict between the decisions of the District Courts of Appeal.

ARGUMENT

I. THE COURT SHOULD EXERCISE ITS DISCRETIONARY JURISDICTION IN THIS CASE BY VIRTUE OF ARTICLE V, SECTION 3(b)(4) OF THE FLORIDA CONSTITUTION.

The District Court of Appeal of the State of Florida, Fifth District, in its decision in the instant case makes clear reference to a conflict between the decision of that court in Dessert v. Electric Mutual Liability Insurance Company, 392 So.2d 340 (Fla. 5th DCA 1981), the decision in Kaplan v. Circuit Court of Tenth Judicial Circuit, 495 So.2d 231 (Fla. 2d DCA 1986) and the conflicting decision which presently is under review by the Supreme Court in Sullivan v. Streeter, 485 So.2d 893 (Fla. 4th DCA 1986). In Sullivan v. Streeter, the District Court of Appeal, State of Florida, Fourth District, felt that the question and the issue raised by that case were questions of great public importance. It reversed the lower court and held that there was responsibility to an injured employee by those co-employees that are corporate officers. It found that there was indeed responsibility and said corporate officers should be held accountable for conduct which may cause injury to fellow employees.

The Supreme Court presently has under review the decision of the Fourth District in the Sullivan case. Should the Supreme Court uphold the lower court in the Sullivan case, that result would be completely inconsistent with the result reached in the instant case. The only opportunity for Petitioners to have their case reviewed and have their outcome coincide with that of the

Sullivan case, would be for this Court to undertake its discretionary jurisdiction as raised by the clear conflict between the decisions of the various District Courts within the State on this very important issue.

The discretionary jurisdiction of this Court should be utilized to avoid inconsistent outcomes among the various sister courts. This case presents a clear example of where inconsistent results appear to have been reached on the same issue of law and only by the acceptance of jurisdiction by this Court will harmony of results and logical and consistent outcome in these various cases be brought about. The result in the present case not only conflicts with the Sullivan case presently before the Court, but further conflicts with Kaplan v. Circuit Court of Tenth Judicial Circuit, 495 So.2d 231 (Fla. 2d DCA 1986), which also seems to reach a different and conflicting conclusion from the Sullivan decision and the decision in the instant case.

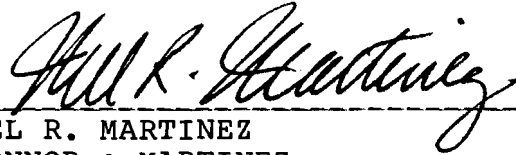
The Sullivan court certified the issue raised by these cases as being a question of great public importance. These cases attempt to construe new language in Florida Statute, Section 440.11 (1983). It is important that a clear statement of Florida law be expressed in this area.

With the Court having the Sullivan case presently under review, it is urged that jurisdiction be exercised and review granted.

CONCLUSION

It is prayed that the Supreme Court exercise its discretionary jurisdiction and accept for review the decision of the District Court of Appeal, the State of Florida, Fifth District.

Respectfully submitted,



MEL R. MARTINEZ
CONNOR & MARTINEZ
Post Office Box 2447
Orlando, Florida 32802
305/849-1061
Attorneys for Plaintiffs/Petitioners

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail to LESLIE KING O'NEAL, ESQ., Post Office Drawer 1991, Orlando, Florida, 32802, this 17th day of March, 1987.



MEL R. MARTINEZ