

SUPREME COURT OF FLORIDA

Kirton v. Fields

997 So. 2d 349 (Fla. 2008) · No. Nos. SC07-1739, SC07-1741, SC07-1742 · Decided December 11, 2008

SUMMARY

The Supreme Court of Florida held that a parent may not execute a pre-injury release that binds a minor child or the child's estate in a tort action arising from participation in a commercial activity. The court answered the certified question in the negative, approved the Fourth District Court of Appeal's decision, disapproved *Lantz v. Iron Horse Saloon, Inc.*, and remanded the case.

CASE DETAILS

COURT	Supreme Court of Florida
WRITING FOR THE COURT	Per curiam; Quince, C.J.; Anstead, J.; Pariente, J.; Lewis, J.; Wells, J.
JURISDICTION	Florida
DECIDED	December 11, 2008
DOCKET	Nos. SC07-1739, SC07-1741, SC07-1742
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Supreme Court of Florida reviewed a Fourth District Court of Appeal decision reversing summary judgment for defendants in a wrongful-death action and certifying a question of great public importance concerning a parent's authority to execute a pre-injury release on behalf of a minor.
STANDARD OF REVIEW	De novo review applies because enforceability of the pre-injury release presented a pure question of law arising from undisputed facts.
PRECEDENTIAL VALUE	Published, precedential decision of the Supreme Court of Florida
PARTIES	Scott Corey Kirton, Dean Dyess, H. Spencer Kirton, Spencer Kirton, Dudley Kirton, Kirton Brother Lawn Service, Inc. v. Jordan Fields

TOPICS

- personal injury
- wrongful death
- torts
- appellate procedure
- standard of review

PRACTICE AREAS

- torts
- personal injury
- wrongful death
- constitutional law
- appellate procedure

QUESTIONS PRESENTED

1. Whether a parent may execute a pre-injury release that binds a minor child's estate and waives the child's future tort claims arising from participation in a commercial activity.
2. Whether section 744.301(2), Florida Statutes, authorizes a parent to execute such a pre-injury release on behalf of a minor child.

HOLDINGS

1. A parent does not have authority to execute a pre-injury release on behalf of a minor child when the release concerns participation in a commercial activity; the release is unenforceable against the minor or the minor's estate in a tort action arising from injuries sustained in that activity.
2. Section 744.301(2), Florida Statutes, does not authorize a parent to execute a pre-injury release because it applies when a minor already has a cause of action and permits settlement of that existing claim within specified limits; a pre-injury release occurs before any cause of action accrues and extinguishes potential claims.

KEY QUOTATIONS

“For the reasons discussed below, we answer the certified question in the negative and hold that a parent does not have the authority to execute a pre-injury release on behalf of a minor child when the release involves participation in a commercial activity.” (997 So. 2d at 350)

“While a parent's decision to allow a minor child to participate in a particular activity is part of the parent's fundamental right to raise a child, this does not equate with a conclusion that a parent has a fundamental right to execute a pre-injury release of a tortfeasor on behalf of a minor child.” (997 So. 2d at 357-58)

“If pre-injury releases were permitted for commercial establishments, the incentive to take reasonable precautions to protect the safety of minor children would be removed.” (997 So. 2d at 358)

“Based on these public policy concerns, it is clear that the pre-injury release executed by Bobby Jones on behalf of his now deceased son was unenforceable because it prevented the minor's estate from bringing a cause of action against the commercial establishment that provided the activity which resulted in the minor's death.” (997 So. 2d at 358)

FACTUAL BACKGROUND

Fourteen-year-old Christopher Jones died after being ejected from an ATV while attempting a jump at Thunder Cross Motor Sports Park. His father, acting as Christopher's natural guardian, had signed a release, waiver, assumption-of-risk, and indemnity agreement as a condition of entry and participation. Christopher's estate brought a wrongful-death action alleging, among other things, negligent design and maintenance of the course and failure to provide a flag person. The defendants relied on the release and obtained summary judgment in the trial court.

PROCEDURAL HISTORY

The personal representative of Christopher Jones's estate filed a wrongful-death action against the owners and manager of a commercial ATV park after Christopher died in an ATV accident. The trial court granted the defendants summary judgment, concluding that a release signed by Christopher's father barred the claim. The Fourth District reversed, held that the release could not bind the minor's estate, and certified the question to the Supreme Court of Florida. The Supreme Court approved the Fourth District's decision, disapproved *Lantz v. Iron Horse Saloon, Inc.*, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded to the lower court for proceedings consistent with the opinion after approval of the Fourth District's reversal of summary judgment.

CASES CITED

- *Fields v. Kirton*, 961 So. 2d 1127 (Fla. 4th DCA 2007)
- *Lantz v. Iron Horse Saloon, Inc.*, 717 So. 2d 590 (Fla. 5th DCA 1998)
- *Global Travel Marketing, Inc. v. Shea*, 908 So. 2d 392 (Fla. 2005)
- *D'Angelo v. Fitzmaurice*, 863 So. 2d 311, 314 (Fla. 2003)
- *Troxel v. Granville*, 530 U.S. 57, 66-69 (2000)
- *Beagle v. Beagle*, 678 So. 2d 1271, 1275 (Fla. 1996)
- *Meyer v. Nebraska*, 262 U.S. 390 (1923)
- *Von Eiff v. Azicri*, 720 So. 2d 510, 514 (Fla. 1998)
- *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 600 (1982)
- *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944)
- *Hojnowski v. Vans Skate Park*, 187 N.J. 323, 901 A.2d 381 (2006)
- *Applegate v. Cable Water Ski, L.C.*, 974 So. 2d 1112 (Fla. 5th DCA 2008)
- *Shea v. Global Travel Marketing, Inc.*, 870 So. 2d 20 (Fla. 4th DCA 2003)
- *Cain v. Banka*, 932 So. 2d 575, 578 (Fla. 5th DCA 2006)
- *Ivey Plants, Inc. v. FMC Corp.*, 282 So. 2d 205, 208 (Fla. 4th DCA 1973)
- Restatement (Second) of Torts § 496B
- *P.W.G. v. State*, 702 So. 2d 488, 491 (Fla. 1997)
- *State v. D.H.*, 340 So. 2d 1163, 1166 (Fla. 1976)
- *In re Camm*, 294 So. 2d 318, 320 (Fla. 1974)
- *Schutz v. Schutz*, 581 So. 2d 1290, 1293 (Fla. 1991)
- *Lamm v. Chapman*, 413 So. 2d 749, 753 (Fla. 1982)
- *Kern v. Kern*, 333 So. 2d 17, 19 (Fla. 1976)

- Gonzalez v. City of Coral Gables, 871 So. 2d 1067 (Fla. 3d DCA 2004)
- Krathen v. School Board of Monroe County, 972 So. 2d 887 (Fla. 3d DCA 2007)
- In re Royal Caribbean Cruises Ltd., 459 F. Supp. 2d 1275 (S.D. Fla. 2006)
- In re Royal Caribbean Cruises, Ltd., 403 F. Supp. 2d 1168 (S.D. Fla. 2005)
- Johnson v. New River Scenic Whitewater Tours, Inc., 313 F. Supp. 2d 621 (S.D.W. Va. 2004)
- Meyer v. Naperville Manner, Inc., 262 Ill. App. 3d 141, 634 N.E.2d 411 (1994)
- Smith v. YMCA of Benton Harbor/St. Joseph, 216 Mich. App. 552, 550 N.W.2d 262 (1996)
- Doyle v. Bowdoin College, 403 A.2d 1206 (Me. 1979)
- Hawkins v. Peart, 37 P.3d 1062, 1066 (Utah 2001)
- Scott v. Pacific West Mountain Resort, 119 Wash. 2d 484, 834 P.2d 6 (1992)
- Hohe v. San Diego Unified School District, 224 Cal. App. 3d 1559, 274 Cal. Rptr. 647 (1990)
- Sharon v. City of Newton, 437 Mass. 99, 769 N.E.2d 738 (2002)
- Zivich v. Mentor Soccer Club, Inc., 82 Ohio St. 3d 367, 696 N.E.2d 201, 205 (1998)
- Ritz v. Florida Patient's Compensation Fund, 436 So. 2d 987, 989 (Fla. 5th DCA 1983)
- Tallahassee Memorial Regional Medical Center, Inc. v. Petersen, 920 So. 2d 75, 78 (Fla. 1st DCA 2006)