

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

John Doe and Janet Doe v. Young Men's Christian Association of the Suncoast, Inc.; Delonyx Cortez; Linda Penn; Play Space Services, Inc.; M.D.K.; and C.K.

Doe v. YMCA of the Suncoast · No. 2D2024-1900 · Decided May 15, 2026

SUMMARY

The Florida Second District Court of Appeal reviewed the dismissal with prejudice of the parents' individual claims arising from an incident involving their three-year-old daughter at a YMCA Kids Zone. The court held that the parents should have been allowed to amend their loss of filial consortium and breach of contract claims, but affirmed with-prejudice dismissal of their breach of fiduciary duty, intentional infliction of emotional distress, and negligent infliction of emotional distress claims. The case was affirmed in part, reversed in part, and remanded.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Sleet, J.; Lucas, C.J.; Black, J.
JURISDICTION	District Court of Appeal of Florida, Second District
DECIDED	May 15, 2026
DOCKET	2D2024-1900
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from an order dismissing with prejudice the parents' individual claims for loss of filial consortium, breach of fiduciary duty, intentional infliction of emotional distress, negligent infliction of emotional distress, and breach of contract.
STANDARD OF REVIEW	Denial of leave to amend a complaint is reviewed for abuse of discretion. On a motion to dismiss for failure to state a cause of action, factual allegations are taken as true.
PRECEDENTIAL VALUE	Published opinion
PARTIES	John Doe, Janet Doe v. Young Men's Christian Association of the Suncoast, Inc., Delonyx Cortez, Linda Penn, Play Space Services, Inc., M.D.K., C.K.

TOPICS

motion to amend civil procedure intentional infliction of emotional distress
negligent infliction of emotional distress contracts

PRACTICE AREAS

civil procedure torts contracts

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion by dismissing the parents' loss of filial consortium and breach of contract claims with prejudice.
2. Whether the parents could state a cause of action for breach of fiduciary duty against the YMCA and its employees.
3. Whether the parents stated claims for intentional infliction of emotional distress based on the incident involving their daughter and the YMCA's postincident conduct.
4. Whether the parents' negligent infliction of emotional distress claims were barred by Florida's impact rule because they did not contemporaneously perceive the incident.

HOLDINGS

1. The trial court abused its discretion by dismissing the loss of filial consortium and breach of contract claims with prejudice because those claims had not been previously challenged in a manner that constituted abuse of the privilege to amend, amendment would not prejudice the defendants, and amendment was not shown to be futile.
2. The parents could not state a cause of action for breach of fiduciary duty against the YMCA or its employees because the alleged facts did not establish a fiduciary relationship between the parents and defendants.
3. The parents failed to state claims for intentional infliction of emotional distress, and dismissal with prejudice was proper after their third attempt to plead those claims.
4. The parents' negligent infliction of emotional distress claims were barred because they did not contemporaneously perceive or otherwise become involved in the incident causing the alleged injury to their daughter.

KEY QUOTATIONS

"Further, 'all doubts should be resolved in favor of allowing the amendment and refusal to do so generally constitutes an abuse of discretion unless it clearly appears that [1] allowing the amendment would prejudice the opposing party, [2] the privilege to amend has been abused, or [3] amendment would be futile.'" (at 4)

"one may not unilaterally impose a fiduciary responsibility on another simply by reposing trust; absent some conscious acceptance of such duties, no fiduciary relationship is created.'" (at 8)

“We note that it is not lack of compassion but rather our fidelity to the law that bars relief for these claims.”
(at 13)

FACTUAL BACKGROUND

The Does' three-year-old daughter was in the YMCA's Kids Zone under the supervision of YMCA employees when she reported that two older boys had touched her inappropriately. YMCA personnel notified Mrs. Doe but did not immediately contact law enforcement; Mrs. Doe later took the child home, and Mr. Doe demanded that the YMCA notify law enforcement. The parents asserted individual claims arising from the incident, including loss of filial consortium, breach of contract, breach of fiduciary duty, IIED, and NIED.

PROCEDURAL HISTORY

The Does filed an original complaint in 2022. After the trial court granted motions to dismiss without prejudice and allowed amendment, they filed first and second amended complaints. The trial court dismissed all of the parents' remaining claims with prejudice after their third pleading attempt. The appellate court reversed only the with-prejudice dismissal of the loss of filial consortium and breach of contract claims and affirmed the dismissal of the breach of fiduciary duty, IIED, and NIED claims.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court must allow the Does an opportunity to amend their loss of filial consortium and breach of contract counts. The dismissals with prejudice of the breach of fiduciary duty, IIED, and NIED claims remain affirmed.

CASES CITED

- Wallace v. Dean, 3 So. 3d 1035, 1042 (Fla. 2009)
- CHHS Hosp. Co. v. Harmon, 381 So. 3d 679, 682 (Fla. 2d DCA 2024)
- Drish v. Bos, 298 So. 3d 722, 723-24 (Fla. 2d DCA 2020)
- Saidi v. Saqr, 207 So. 3d 991, 992 (Fla. 5th DCA 2016)
- Sorenson v. Bank of N.Y. Mellon as Tr. for Certificate Holders CWALT, Inc., 261 So. 3d 660, 663 (Fla. 2d DCA 2018)
- Cruz v. Broward Cnty. Sch. Bd., 800 So. 2d 213, 216 (Fla. 2001)
- United States v. Dempsey, 635 So. 2d 961 (Fla. 1994)
- Broward Cnty. Sch. Bd. v. Cruz, 761 So. 2d 388, 395 (Fla. 4th DCA 2000)
- Amiker v. Mid-Century Ins., 398 So. 2d 974, 975 (Fla. 1st DCA 1981)
- Gracey v. Eaker, 837 So. 2d 348, 353 (Fla. 2002)
- Mawardi v. Cohen, 381 So. 3d 1, 3 (Fla. 4th DCA 2023)
- Watkins v. NCNB Nat'l Bank of Fla., N.A., 622 So. 2d 1063, 1065 (Fla. 3d DCA 1993)

- Suzmar, LLC v. First Nat'l Bank of S. Miami, 388 So. 3d 852, 855 (Fla. 3d DCA 2023)
- Silver v. Countrywide Home Loans, Inc., 760 F. Supp. 2d 1330, 1339 (S.D. Fla. 2011)
- Mac-Gray Servs., Inc. v. DeGeorge, 913 So. 2d 630, 633 (Fla. 4th DCA 2005)
- Kazanjian v. Sch. Bd. of Palm Beach Cnty., 967 So. 2d 259, 264 (Fla. 4th DCA 2007)
- Johns Hopkins All Children's Hosp., Inc. v. Kowalski, 425 So. 3d 645, 662-63 (Fla. 2d DCA 2025)
- Glegg v. Van Den Hurk, 379 So. 3d 1171, 1174 (Fla. 4th DCA 2024)
- Buchanan v. Miami-Dade County, 400 So. 3d 684, 686 (Fla. 3d DCA 2024)
- M.M. v. M.P.S., 556 So. 2d 1140, 1141 (Fla. 3d DCA 1989)
- Liberty Mut. Ins. v. Steadman, 968 So. 2d 592, 594 (Fla. 2d DCA 2007)
- Ponton v. Scarfone, 468 So. 2d 1009, 1011 (Fla. 1985)
- Willis v. Gami Golden Glades, LLC, 967 So. 2d 846, 850 (Fla. 2007)
- Eagle-Picher Indus., Inc. v. Cox, 481 So. 2d 517, 526 (Fla. 3d DCA 1985)
- Zell v. Meek, 665 So. 2d 1048, 1054 (Fla. 1995)
- Champion v. Gray, 478 So. 2d 17 (Fla. 1985)
- Miranda ex rel. Doe 1 v. Sinrod, 117 So. 3d 786, 789 (Fla. 4th DCA 2013)
- Doe ex rel. Doe v. Abusahyoun, 67 Conn. L. Rptr. 242 (Conn. Super. Ct. 2018)
- Murphy v. Wakelee, 721 A.2d 1181, 1186-87 (Conn. 1998)