

Circuit Court Finds Workers' Compensation Immunity Statute 440.11 Unconstitutional

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We have received numerous inquiries regarding a Miami-Dade Circuit Court's order granting an Amended Motion for Summary Judgment in favor of Petitioners Florida Workers' Advocates, Workers' Injury Law & Advocacy Group and Elsa Padgett in a case ostensibly against the Florida Attorney General. On summary judgment, the Petitioners argued, and the Court, Honorable Jose Cuerto presiding, agreed, that Section 440.11, the immunity section of the workers' compensation statute, was unconstitutional and the Court entered a declaratory judgment to that effect. For a number of reasons discussed in more detail below, we do not believe that this ruling will stand. More importantly, **this trial court order does not bind any other civil court or the JCC on this issue. Unless and until the order is addressed by an appellate court, it has no precedential value whatsoever.**

This issue arose in the context of a personal injury action brought by Julio and Nelida Cortes against Velda Farm, alleging that Mr. Cortes was injured while working for Velda Farms. Mr. Cortes sued his employer in simple negligence and asserted that Velda Farms was estopped from claiming workers' compensation immunity. Velda Farms answered and asserted its immunity as an affirmative defense. Several months later, the Cortes' amended their Complaint to add a count for declaratory relief, seeking a declaration from the Court that Sections 440.09 and 440.11 of the Florida Statutes were unconstitutional. While they gave notice of their declaratory judgment claim to the Attorney General, they did not seek to add it as a party to the lawsuit. Thereafter, the Workers' Injury Law & Advocacy Group (WILG) and Florida Workers' Advocates (FWA), two groups comprised of workers' compensation claimant attorneys, sought to intervene as Plaintiffs in the litigation, but only with respect to the declaratory judgment Count. Velda Farms withdrew its immunity defense and sought to dismiss the declaratory relief count as moot, on the grounds that since Velda Farms was no longer asserting its entitlement to workers' compensation immunity, the Court lacked subject matter jurisdiction over the declaratory judgment count because there was no present controversy ripe for consideration by the Court.

WILG and FWA moved to sever the declaratory judgment action from the rest of the personal injury litigation, although they acknowledged that once Velda Farms withdrew its immunity defense, any ruling on the

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constitutionality of the statute would have no effect on the outcome of the negligence action between the Cortes' and Velda Farms. Despite this concession, the WILG and FWA sought a separate trial on the declaratory judgment claim. The Court granted the motion to sever claims, but dismissed Velda Farms as a party to the declaratory judgment action and ordered that the declaratory judgment Count would be tried separately by WILG and FWA, as Intervenor, and the State of Florida, Office of the Attorney General, even though the Attorney General was never a party to the litigation. The order further provided that the Cortes', like Velda Farms, would have no involvement in this separate trial.

WILG and FWA sought summary judgment on the constitutionality of the workers' compensation immunity statute and the trial court initially denied that motion, finding that since neither of the original parties to the litigation would be involved in the separate declaratory action, a declaratory judgment "would be akin to . . . an advisory opinion since there is not an actual, present, and practical need for the declaration." Accordingly, the Court denied summary judgment at that time.

Thereafter, the Court permitted an individual named Elsa Padgett to be added as a Plaintiff by intervention although Ms. Padgett never even alleged that she attempted to assert a cause of action against her employer and that her employer would have raised workers' compensation immunity as an affirmative defense if it had been sued. Ms. Padgett was not a party to the underlying personal injury action but after her intervention in the declaratory judgment litigation, the Intervenor renewed their motion for summary judgment on the constitutionality of the workers' compensation immunity provisions in Chapter 440. The trial court issued an order to show cause to the Attorney General's office, requesting that the AG "show cause why the [summary judgment motion] should not be granted". In response, the Attorney General filed a well-written and reasoned response to the show cause order setting forth that the trial court had no subject matter jurisdiction because there was no proper party involved in the declaratory judgment action and no justiciable controversy since a ruling on the declaratory judgment Count would have no effect on the underlying dispute between the Cortes' and Velda Farms. The Attorney General noted that neither the State nor the Attorney General itself were parties in this action and the mere fact that the Intervenor provided the Attorney General with notice of the action did not render it a party. As the Attorney General explained, it was within its **own** discretion as to whether it wishes to intervene in a case in which the constitutionality of a statute has been challenged. In any event, neither the State of Florida nor the Attorney General would be an appropriate party because the appropriate party in a lawsuit challenging a statute's constitutionality is the state office charged with enforcing the statute. Neither the State of Florida nor the Attorney General had any responsibility to enforce the workers' compensation laws and therefore, even if they had wanted to intervene, which they did not, it would not have been appropriate for them to do so.

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The Attorney General further explained to the Court that in this case, there was no party defendant and no "live" controversy affecting any true party to this litigation and therefore, there was no one against whom a judgment could be rendered. Further, since the declaratory judgment Court had technically been dismissed after Velda Farms withdrew its immunity defense, there was no longer an existing claim to be adjudicated. Ms. Padgett's intervention in the litigation did not cure any of the foregoing jurisdictional problems, nor did it give her standing to litigate an issue that had no apparent effect on her, since she had no civil lawsuit against her employer.

Finally, the Attorney General noted that Florida's Workers' Compensation Act, and specifically the immunity provisions, have been the subject of repeated constitutional challenges, none of which have been successful. Moreover, the Attorney General pointed out that WILG and FWA have filed amicus briefs in Westphal v. City of St. Petersburg, 122 So. 2d 440 (Fla. 1st DCA 2013) and Castellanos v. Next Door Co., Case No. SC 13-2082, both of which are currently pending before the Florida Supreme Court and both of which raise constitutional challenges to other portions of the workers compensation statute. The Attorney General argued that even if they had standing, the Intervenors could not possibly prevail on their constitutional claims in this case because the Circuit Court had no jurisdiction to consider an issue that was not ripe for a declaratory ruling.

On August 13, 2014, the trial court granted the Amended Motion for Summary Judgment filed by WILG, FWA and Elsa Padgett, finding Florida Statute 440.11 is unconstitutional because the workers compensation statute no longer provides a "reasonable alternative remedy to the tort remedy it supplanted", in light of numerous amendments to the statute, reducing benefits to which claimants may be entitled. Presumably, the case is headed to an appeal at the Third District Court of Appeal, but it is unclear who would appeal it because there is literally no defendant in this case that is aggrieved by the trial court's decision. We will of course continue to watch the progress of this case and will report on any significant developments.

We want to emphasize to you that this trial court order is not precedent and does not bind any other court with respect to other civil claims that have raised or might raise constitutional challenges to workers' compensation immunity. Only an appellate court decision constitutes precedent. Moreover, since the issue of whether an employer is immune from tort liability in any given case is not one that concerns the Judge of Compensation Claims, the Circuit Court's ruling has no effect whatsoever on pending or future claims pending before the JCC.

We hope that the foregoing will answer some of your questions and address some of your concerns. Should you have any additional questions or comments, please feel free to contact the attorneys at Conroy Simberg.