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### **NINTH JUDICIAL CIRCUIT COURT**

#### **Opinion**

CASE NO.: 2016-CA-007634-0  
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### **FIFTH DISTRICT COURT OF APPEAL**

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CASE NO. 5D19-2635  
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### **FIFTH DISTRICT COURT OF APPEAL**

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### **SUPREME COURT OF FLORIDA**

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CASE NO.: SC21-199  
(February 11, 2021) ..... 11a

IN THE CIRCUIT COURT OF THE NINTH  
JUDICIAL CIRCUIT, IN AND FOR ORANGE  
COUNTY, FLORIDA

CASE NO.: 2016-CA-007634-0

DAVID W. FOLEY and JENNIFER T. FOLEY.

Plaintiffs,

v.

ORANGE COUNTY, PHIL SMITH, CAROL  
HOSSFELD, MITCH GORDON, ROCCO  
RELVINI, TARA GOULD, TIM BOLDIG, FRANK  
DETOMA, ASIMA AZAM, RODERICK LOVE,  
SCOTT RICHMAN, JOE ROBERTS, MARCUS  
ROBINSON, RICHARD CROTTY, TERESA  
JACOBS, FRED BRUMMER, MILDRED  
FERNANDEZ, LINDA STEWART, BILL SEGAL,  
and TIFFANY RUSSELL,  
Defendants.

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AMENDED<sup>1</sup> ORDER DISMISSING THE AMENDED  
COMPLAINT WITH PREJUDICE AS TO PHIL

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<sup>1</sup> This Court entered its initial Order on August 2, 2019, and it made the following statement in the introductory paragraph: "The Court, having carefully considered the Motions, case law, and arguments of counsel from both parties, and otherwise being duly advised in the premises, finds as follows:" The Plaintiffs have correctly pointed out that they are not represented by counsel. The Court corrects that discrepancy in this Order. Additionally in the introductory paragraph, the Court erroneously included an outdated motion from the Official Defendants; this Order now references the most recent motion to dismiss from the

SMITH, CAROL HOSSFELD. MITCH GORDON.  
 ROCCO RELVINK TARA GOULD. TIM BOLDIG.  
 FRANK DETOMA. ASIMA AZAM, RODERICK  
 LOVE. SCOTT RICHMAN. JOE ROBERTS,  
 MARCUS ROBINSON. RICHARD CROTTY,  
 TERESA JACOBS. FRED BRUMMER, MILDRED  
 FERNANDEZ, LINDA STEWART, BILL SEGAL,  
 AND TIFFANY RUSSELL

THIS MATTER came before the Court for a hearing on May 30, 2019 upon the "The Official Defendants' Amended Motion to Dismiss with Prejudice,"<sup>2</sup> filed on May 8, 2019, and "The Employee Defendants' Motion to Strike the Amended Complaint, Request for Judicial Notice, and Motion to Dismiss This Action with Prejudice,"<sup>3</sup> filed on May 3, 2019. The Court, being duly advised in the premises, finds as follows:

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Official Defendants. The ruling contained in this Order otherwise remains undisturbed.

- <sup>2</sup> "The Official Defendants" refer to the members of the Board of Zoning Adjustment and the Board of County Commissioners, who were named both in their individual and official capacities. They include the following Defendants: Asima Azam, Fred Brummer, Richard Crotty, Frank Detoma, Mildred Fernandez, Teresa Jacobs, Roderick Love, Scott Richman, Joe Roberts, Marcus Robinson, Tiffany Russell, Bill Segal, and Linda Stewart.
- <sup>3</sup> The "Employee Defendants" refer to the named Defendants that were higher level employees within the Orange County government at the time of these incidents: Phil Smith, as Code Enforcement Inspector; Carol Hossfeld, as the Permitting Chief Planner; Mitch Gordon, as the Zoning Manager; Rocco Relvini, as the Board of Zoning Adjustment Coordination Chief Planner; Tim Boldig, as the Chief of

There are no allegations in the Amended Complaint that the named Defendants acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property. As such, all the individual Defendants in this cause are afforded absolute immunity, and therefore cannot be sued. *Corn v. City of Lauderdale Lakes*, 997 F. 2d 1369, 1393 (“[G]overnment officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.” (citing *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982))); § 768.28(9)(a), Fla. Stat. (2016) (“No officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort or named as a party defendant in any action for any injury or damage suffered as a result of any act, event, or omission of action in the scope of her or his employment or function, unless such officer, employee, or agent acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.”); *Willingham v. City of Orlando*, 929 So. 2d 43, 48 (Fla. 5th DCA 2006) (“Importantly, the immunity provided by section 768.28(9)(a) is both an immunity from liability and an immunity from suit, and the benefit of this immunity is effectively lost if

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Operations of the Orange County Zoning Division; and Tara Gould, as an Assistant Orange County Attorney with the Orange County Attorney's Office...

the person entitled to assert it is required to go to trial, (emphasis in original)); *Lemay v. Kondrk*, 923 So. 2d 1188, 1192 (Fla. 5<sup>th</sup> DCA 2006) ("We fully recognize that the immunity provided by section 768.28(9)(a) is both an immunity from suit and an immunity from liability, and we recognize that an entitlement is effectively lost if the case is erroneously permitted to go to trial."). This does not preclude the Plaintiffs from seeking redress against Orange County. See *McGhee v. Volusia Co.*, 679 So. 2d 729, 733 (Fla. 1996) ("In any given situation either the agency can be held liable under Florida law, or the employee, but not both.").

Accordingly, the following is hereby ORDERED AND ADJUDGED:

1. "The Official Defendants' Amended Motion to Dismiss with Prejudice" is GRANTED.
2. "The Employee Defendants' Motion to Strike the Amended Complaint, Request for Judicial Notice, and Motion to Dismiss This Action with Prejudice" is GRANTED.
3. The Plaintiffs' Amended Complaint, filed February 15, 2017, is DISMISSED with prejudice as to the following Defendants: Phil Smith, Carol Hossfield, Mitch Gordon, Rocco Relvini, Tara Gould, Tim Boldig, Frank Detoma, Asima Azam, Roderick Love, Scott Richman, Joe Roberts, Marcus Robinson, Richard Crotty, Teresa Jacobs, Fred Brummer, Mildred Fernandez, Linda Stewart, Bill Segal, and Tiffany Russell.
4. Therefore, final judgment is hereby entered in favor of the Defendants Phil Smith, Carol

Hossfield, Mitch Gordon, Rocco Relvini, Tara Gould, Tim Boldig, Frank Detoma, Asima Azam, Roderick Love, Scott Richman, Joe Roberts, Marcus Robinson, Richard Crotty, Teresa Jacobs, Fred Brummer, Mildred Fernandez, Linda Stewart, Bill Segal, and Tiffany Russell. The Plaintiffs, David W. Foley and Jennifer <sup>3</sup> T. Foley, shall take nothing by this action against said Defendants, and said Defendants shall go hence without day.

5. The Court reserves jurisdiction over any claims made or to be made by said Defendants for an award of costs and attorney's fees against the Plaintiffs.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 10<sup>th</sup> day of October, 2019.

PATRICIA L. STROWBRIDGE  
Circuit Judge

IN THE DISTRICT COURT OF APPEAL  
OF THE STATE OF FLORIDA FIFTH DISTRICT  
NOT FINAL UNTIL TIME EXPIRES TO  
FILE MOTION FOR REHEARING AND  
DISPOSITION THEREOF IF FILED

CASE NO. 5D19-2635

DAVID W. FOLEY, JR. AND JENNIFER T. FOLEY,  
Appellants,

v.

ORANGE COUNTY, ET AL,  
Appellees.

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Decision filed October 13, 2020

Appeal from the Circuit Court for Orange County,  
Patricia Strowbridge, Judge.

David W. Foley, Jr. and Jennifer T. Foley, Orlando,  
Pro se.

Linda S. Brehmer Lanosa, Assistant County  
Attorney and Jeffrey J. Newton, for the Orange  
County Attorney's Office, Orlando, for Appellee,  
Orange County.

Ronald L. Harrop, of O'connor & O'connor, LLC,  
Orlando, for Appellees, Asima Azam, Fred Brummer,  
Richard Crotty, Frank Detoma, Mildred Fernandez,  
Teresa Jacobs, Roderick Love, Scott Richman, Joe  
Roberts, Marcus Robinson, Tiffany Russell, Bill  
Segal, and Linda Stewart.

Jessica C. Conner, of Dean, Ringers, Morgan and  
Lawton, P.A., Orlando, for Appellees, Tim Boldig,

Carol Hossfield (n/k/a Carol Knox), Rocco Relvini,  
Phil Smith, Tara Gould, and Mitch Gordon.

PER CURIAM.

AFFIRMED.

ORFINGER and EDWARDS, JJ., and CHASE, M.,  
Associate Judge, concur.



IN THE DISTRICT COURT OF APPEAL  
OF THE STATE OF FLORIDA FIFTH DISTRICT

CASE NO. 5D19-2635

DAVID W. FOLEY, JR. AND JENNIFER T. FOLEY,  
Appellants,

v.

ORANGE COUNTY, ET AL,  
Appellees.

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DATE: December 08, 2020

BY ORDER OF THE COURT:

ORDERED that Appellants' "Amended Motion for  
Written Opinion, Rehearing, Rehearing En Banc and  
Certified Question," filed November 30, 2020, is  
denied.

I hereby certify that the foregoing is (a true copy of)  
the original Court order.

SANDRA B. WILLIAMS, CLERK

Panel: Judges Orfinger, Edwards, and Chase (acting  
on panel-directed motion(s))  
En Banc Court (acting on en banc motion)  
Judge Eisnaugle recused from en banc  
consideration

IN THE DISTRICT COURT OF APPEAL  
OF THE STATE OF FLORIDA FIFTH DISTRICT

CASE NO. 5D19-2635

DAVID W. FOLEY, JR. AND JENNIFER T. FOLEY,  
Appellants,

v.

ORANGE COUNTY, ET AL,  
Appellees.

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DATE: January 07, 2021

BY ORDER OF THE COURT:

ORDERED that Appellants' "Motion for  
Rehearing of December 8th Order," filed December  
23, 2020, is denied.

I hereby certify that the foregoing is (a true copy  
of) the original Court order.

SANDRA B. WILLIAMS, CLERK

Panel: Judges Orfinger, Edwards, and Chase

11a

# Supreme Court of Florida

THURSDAY, FEBRUARY 11, 2021

CASE NO.: SC21-199

Lower Tribunal No(s):

5D19-2635; 482016CA007634A0010X

DAVID W. FOLEY JR., ET AL., Petitioner(s)

vs.

ORANGE COUNTY, ET AL., Respondent(s)

This case is hereby dismissed. This Court lacks jurisdiction to review an unelaborated decision from a district court of appeal that is issued without opinion or explanation or that merely cites to an authority that is not a case pending review in, or reversed or quashed by, this Court. *See Wheeler v. State*, 296 So. 3d 895 (Fla. 2020); *Wells v. State*, 132 So. 3d 1110 (Fla. 2014); *Jackson v. State*, 926 So. 2d 1262 (Fla. 2006); *Gandy v. State*, 846 So. 2d 1141 (Fla. 2003); *Stallworth v. Moore*, 827 So. 2d 974 (Fla. 2002); *Harrison v. Hyster Co.*, 515 So. 2d 1279 (Fla. 1987); *Dodi PubVg Co. v. Editorial Am. S.A.*, 385 So.2d1369(Fla. 1980); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980).

No motion for rehearing or reinstatement will be entertained by the Court.

A True Copy

Test:

John A. Tomasino

Clerk, Supreme Court

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