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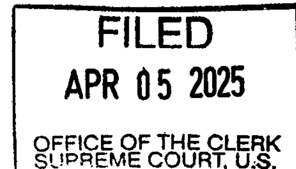

Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI

KEVIN CICHOWSKI, et al.,

Plaintiffs - Appellant(s), Petitioner,

V.

KES, et al

(CVS Pharmacy)

Defendant – Appellee. Respondent

3:23-cv-00599-TJC-PDB

Docket: 24-10183 in 11th Circuit appeal

Cichowski et al v. CVS

Petition for review of the United States Court of Appeals for the Eleventh Circuit

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Kevin Cichowski 4-1-2026
Stanley Cichowski
Christine Cichowski
Christine Cichowski
Pro se Petitioners
cvslawsuitflorida@gmail.com
37 Cleveland Court
Palm Coast, Florida 32137

QUESTION PRESENTED

Should an exemption to the Florida impact rule be made, if a pharmacist is emotionally neglectful in a trusted situation, but did not make contact.

PARTIES TO THE PROCEEDINGS

Petitioners are

Cichowski, Kevin
Cichowski, Stanley
Christine Cichowski
Christine Cichowski

Pro se, Plaintiff/Appellant/Petitioners.

Respondents are

Sophanath Kes

CVS Pharmacy, Inc.

CVS Pharmacy, Inc. is a wholly-owned subsidiary of CVS Health Corporation.

CORPORATE DISCLOSURE STATEMENT

Petitioners, CICHOWSKI family
hereby certifies that, they do not own more than
10% of any stock.

RELATED PROCEEDINGS

This court.
24-14129
Stanley Cichowski,
Jr., et al v.
Andrea
Totten, et al

Florida Fifth District Court of Appeal

5D2024-2304 The judge lied about Stanleys attendance, punishment for, suing Totten.

Federal court of appeal

3:25-cv-00302, Kevin sued over his extreme bail, on a first arrest.

24-14126 involves late notice..

Stanley Cichowski, Jr., et al v. City of Palm Coast, et al involves late notice..

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED.. I

PARTIES TO THE PROCEEDING II

CORPORATE DISCLOSURE STATEMENT XIX

RELATED PROCEEDINGS XXX

TABLE OF CONTENTS XXXI

TABLE OF APPENDICES.................................. XXXIII

TABLE OF AUTHORITIES XXIV

PETITION FOR A WRIT OF CERTIORARI..... 1

OPINIONS BELOW.................................... 1

JURISDICTION... 2

STATUTORY AND REGULATORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE......................... 3

TABLE OF CONTENTS-continued

REASONS FOR GRANTING THE PETITION. 4

Type 2 Bystander impact rule 5

Type 3 Freestanding tort impact rule......... 6

Flood of litigation never manifests................. 16

Current Exemptions to the impact rule........... 17

Further Exeptions to the rule....................... 18

Fiduciary Duty...................................... 19

Conclusion.. 23

Signature.. 24

TABLE OF APPENDICES

APPENDIX A:

Order In the United States Court of Appeals
For the Eleventh Circuit No. 24-10183

APPENDIX B: Judgement
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION
Case No.: 3:22-cv-00599-TJC-PDB

APPENDIX C:

ORDER ON PETITION FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC In the United States Court of Appeals
For the Eleventh Circuit No. 24-10183

APPENDIX D: Motion for Judgment on the Pleadings
Case No.: 3:22-cv-00599-TJC-PDB

Middle District of Florida

TABLE OF AUTHORITIES

International Ocean Telegraph Co. v. Saunders, 32 Fla. 434 (1893) Jun 1893 · Florida Supreme Court
32 Fla. 434

A case that started on a telegraph, issued from downtown Jacksonville florida, in 1890 the plaintiff sued a telegraph company for mental pain and suffering for failure to promptly deliver an urgent telegram from a hospital urging him to come at once because his wife was dying. The telegraph company had the message for a full 60 hours before delivering it. By the time it was finally delivered, the plaintiff's wife had been deceased for over 10 hours.

Willis v. Gami Golden Glades, LLC.967 So. 2d 846
“special relationship” and exception to the impact rule
"Special Relationship": Certain relationships, like doctor-patient, school-student, or psychotherapist-patient, can create a "special relationship" that allows a claim for emotional distress even without physical impact.

ROWELL V. HOLT, 850 So.2d 474 (Fla.2003)
“special relationships”
GRACEY V. EAKER, 837 So.2d 348 (Fla.2002).
“special relationships”

TABLE OF AUTHORITIES-continued

Gracey v. Eaker, 837 So.2d 348, 351 (Fla. 2002) (affirming impact rule in the non-contact context as the law in Florida but holding that it was inapplicable where psychotherapist breached statutory duty of confidentiality)

Tanner v. Hartog, 696 So.2d 705, 708 (Fla. 1997) (holding that impact rule is inapplicable to a claim for negligent stillbirth)

Kush v. Lloyd, 616 So.2d 415, 423 (Fla. 1992) (holding that impact rule is inapplicable to a claim for wrongful birth)

Crane v. Loftin, 70 So. 2d 574, 575-76 (Fla. 1954). In 1954, the driver could have gotten relief if she could have shown gross negligence or intent, as such conduct was never contemplated by the impact rule.
negligence or intent, as such conduct was never contemplated by the impact rule

Gilliam, 291 So. 2d at 595. Gilliam is noteworthy in Florida's impact rule history because the Fourth DCA rejected the impact rule. However, the Florida Supreme Court reversed this decision. The reversal of the lower court's ruling in Gilliam is quite brief and cites to the lower court's opinion for the facts and dissent of the appellate judge for the reasoning. The other apparent effect of this reversal is the Fourth DCA generating harsher impact rule case law than other DCA's. See, e.g., Thomas v. OB/GYN Specialists of Palm Beaches, Inc., 889 So. 2d 971, 972 (Fla. Dist. Ct. App. 2004) (denying relief because stillbirth was not defined in Tanner despite the impact to the mother during the course of treatment). Ironically, Gilliam reaffirmed Florida's adherence to the impact rule, but after subsequent decisions, the case would no longer be barred by the rule because the homeowner had physical manifestations of her mental injury Willis, 967.

Champion v. Gray, 478 So. 2d 17, 18 (Fla. 1985)

Champion, 478 So. 2d at 19. Dillon v. Legg is the seminal bystander case based not on the zone of danger, but a close relationship with the direct victim. There, a bystander claim was allowed to go forward for a mother that watched her daughter die in a car accident because she was closely related to the victim, saw the accident, and was close to the scene of the accident. 441 P.2d 912, 920 (Cal. 1968)

Champion, 478 So. 2d at 19-20

Champion, 478 So. 2d at 18.

Zell v. Meek, 665 So. 2d at 1054.

Zell, 665 So. 2d at 1049. This case would have presented a much more challenging question for the court if the claim would have been brought closer in time to the bombing. The injuries were squarely within the realm of the ad hoc exceptions the court had been creating up to this point due to the obvious credibility of the injury, but there were no physical symptoms yet.

Eagle-Picher Indus., Inc. v. Cox, 481 So. 2d 517, 526 (Fla. Dist. Ct. App. 1985) (extending the physical manifestation rule to direct victim cases), quoted with approval in Willis, 967 So. 2d at 850-51. But see Ruttger Hotel Corp. v. Wagner, 691 So. 2d 1177, 1179 (Fla. Dist. Ct. App. 1997) (calling Champion a bystander rule), disapproved of by Willis, 967 So. 2d at 851.

Kush, 616 So. 2d at 422

Gracey v. Eaker, 837 So. 2d 348, 351 (Fla. 2002).

Lee v. State Farm Mut. Automobile Ins. Co., 238 Ga.App. 767, 517 S.E.2d 328 (1999)

Osborne v. Keeney. At 399 S.W.2d at 24.

Gracey v. Eaker, 837 So 2d 348, 355 (Fla. 2002) "[T]he underlying basis for the [impact] rule is that allowing recovery for injuries resulting from purely emotional distress would open the floodgates for fictitious or speculative claims."

Southtrust Bank and Right Equipment Co. of Pinellas County, Inc. v. Export Ins. Services, Inc., 190 F.Supp.2d 1304 (M.D. Fla., 2002) (holding that an insurance broker and advisor has a fiduciary duty to his client, because of the trust implicit in such a relationship).

Southtrust Bank and Right Equipment Co. of Pinellas County, Inc. v. Export Ins. Services, Inc., 190 F.Supp.2d at 1304 "

Doe V. Evans 814 so.2d at 37400

Watters v. Walgreen Co., 2007 WL 2456169 (Fla. 1st D.C.A. August 31, 2007).

Willis, 967 So. 2d 846 (Fla. 2007). (Pariente, J., concurring)

PETITION FOR A WRIT OF CENRTIORARI

Petitioners Stanley Cichowski, Christine Cichowski and Kevin Cichowski, together, respectfully petition for a Writ of Certiorari. To have the court make an exception to the Florida impact rule, or strike it down all together.

OPINIONS BELOW

Order on Motion for Judgment on the Pleadings
Court name, Middle District of Florida
Christine Cichowski, et al v. Kes, et al1
01/18/2024

Opinion issued by court as to Appellants Christine Cichowski and..Decision: Affirmed. Opinion type: Non-Published. Opinion method: Per Curiam. The opinion is also available through the Court's Opinions page at this linkhttps://media.ca11.uscourts.gov/opinions/unpub/files/202410183.pdf

Order on Motion for Judgment on the Pleadings
Court name, Middle District of Florida
Christine Cichowski, et al v. Kes, et al1
01/18/2024

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. 1254

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled, the Petition(s) for Rehearing En Banc filed by Appellants' Kevin Cichowski, Christine Cichowski, Christine V. Cichowski and Stanley Cichowski, Jr.. are DENIED. [54] [Entered: 01/22/2025 03:14 PM]

STATUTORY AND REGULATORY PROVISIONS INVOLED

The impact rule in Florida dates back to the 1893 Florida Supreme Court ruling in ***International Ocean Telegraph Company v. Saunders.***

The Impact Doctrine is a judicially-created doctrine which precludes the recovery of emotional damages in negligence unless the emotional damages are a direct consequence of a physical impact. Willis v. Gami Golden Glades, LLC, 967 So. 2d at 850.

STATEMENT OF THE CASE

Nature of Suit

Negligence

On or about May 2022 a CVS pharmacist, "also working for a debt collection company as a process server" while on a phone consultation, part of his cvs employment duties, began aggressively questioning the cichowskis about their current address, and past addresses, in a bid to use his phone consultation time to gather information to serve process later on. This break of trust between a client and trusted professional.

Cichowskis are suing for emotional stress during aggressive phone consultation.

REASONS FOR GRANTING THE PETITION

Florida is one of a few remaining states that adheres to the impact rule. Of these states, Florida's rule is the most complex and the most unlike the original impact rule. "Willis v. Gami Golden Glades, LLC, 967 So. 2d at 850" To begin, an impact is only required in negligence actions where the plaintiff is suing for emotional distress.

However, an impact is not required if the victim can prove his emotional injury with some type of physical manifestation. These cases are called direct victim cases. Direct victims are harmed by the tortfeasor's negligent conduct and the victim sues for the resulting emotional harm. You can recover emotional damages in any kind of case, with any kind of injury. The impact rule only limits your ability to recover damages in cases where you have no physical touching or injury to go along with your emotional or mental trauma. Florida traces its impact rule with its roots back to the 1893 decision in International Ocean Telegraph Co. v. Saunders, 14 So. 148 (1893)

In Saunders (1893) the Court's view, in cases such as that pending, circumstances involving no impact with the plaintiff's person, the plaintiff's only injury — "mental suffering and disappointment" — "is one that soars so exclusively within the realms of spirit land that it is beyond the reach of the

courts to deal with, or to compensate." Saunders marked the Court's formal recognition that it would not allow recovery for mental suffering alone in circumstances where no physical contact with the claimant had occurred without the plaintiff demonstrating "some physical injury" from which the mental suffering was "incident to, connected with, and flow[ed] directly [there]from." Although this Court has consistently reaffirmed the viability of the rule in Florida, "in a certain very narrow class of cases in which the foreseeability and gravity of the emotional injury involved, and lack of countervailing policy concerns, have surmounted the policy rationale" of applying the rule, it has created and defined only very narrow exceptions to the applicability of the rule. see Gracey v. Eaker4 . Florida direct victim plaintiffs are directly harmed by the defendant's negligence.

In these cases, a garden-variety negligence action is the main cause of action available. Crane v. Loftin and Gilliam v.Stewart are good starting points for an overview of the direct victim cases. Both cases show rather mechanical applications of the impact rule under facts that would probably survive the rule's application today. In Crane, a woman drove her car across a railroad crossing and was struck by a negligently operated train. She was not physically hit because she leapt from the car in the nick of time, but she suffered from "fright and mental anguish." The driver could not get relief for this distress because she was not physically impacted. Without an impact, the court could not causally tie her emotional distress to the train. This case is a notably old formulation because, even though relief is denied, there is no discussion of any potential psychological harm, such as post-traumatic stress disorder or some type of anxiety.

Gilliam further exposes the harsh nature of the impact rule as the plaintiff did have a physical injury, just not an impact. In Gilliam, an elderly woman suffered a heart attack when a car struck her home. She was not physically hit by the car, but heard the crash, ran out the backdoor to assist, and then returned to bed due to chest pains. The existence of a physically diagnosable injury, which a medical expert could tie to the car colliding with the house, went uncompensated because of the impact rule. Hagan v. Coca-Cola Bottling Co. broadened the definition of an impact when faced with food contamination. In Hagan, a consumer discovered what appeared to be a used condom in her bottle of Coke while drinking from it. The plaintiff in Hagan ingested some of the contaminated soda and filed an NIED claim due to her fear of contracting HIV. These facts forced the court to reconsider a question it addressed in Doyle v. Pillsbury Co. There, a woman saw an insect floating in a can of peas, jumped back in alarm, and fell

over a chair. In Doyle, the court denied relief because the consumer had not actually ingested the peas. However, the court questioned the operation of the impact rule since ingestion of contaminated food provides a concrete connection for causation, particularly one that is foreseeable to the defendant. Hagan had two effects on the Florida impact rule. First, the court labeled ingestion of contaminated food as an impact. While this leap is not without its logic as contaminated food does impact the person eating it, it is nevertheless not a case envisioned in the classic Gilliam version of the rule. Second, the court did not require any physical manifestation of the emotional injury. These two modifications to the impact rule were acceptable in this case because a manufacturer of food products should be able to foresee a person becoming ill if they ingest contaminated food. Even if that harm is purely emotional, the emotional harm that potentially flows from eating contaminated food is easily understood. The experience is common to lawyers and pro se's alike. Keep in mind the foreseeability analysis here as it plays a critical role in the other types of impact rule cases in Florida.

The advance of medical knowledge no doubt hurts the impact rule as well, as courts no longer are doubtful of injuries that are not physical in nature. See Kevin C. Klein & G. Nicole Hininger, Mitigation of Psychological Damages: An Economic Analysis of the Avoidable Consequences Doctrine and Its Applicability to Emotional Distress Injuries, OKLA. CITY U. L. REV. 405, 426 (2004).

**Type 2 of the impact rule,
Bystander Cases**

Bystander cases are those in which the plaintiff witnesses harm being done to a third party by the defendant and sues for the resulting emotional distress. Bystander cases began carving out exceptions earlier than the direct victim line, with the first major case being Champion v. Gray .In Champion, a mother heard a car crash. She came running to the scene of the accident and, seeing her daughter's dead body, died from shock on the spot.

The mother was not physically impacted in any way, and she actually died from a heart attack. However, the causal connection of her death to the driver's negligence was inescapable. This left the court the option of reaffirming the results of

Gilliam or creating some type of exception to recognize the emotional distress of bystanders. In choosing the latter course, the court adopted a bystander test like the Dillon rule. The bystander test announced in Champion allows for an NIED claim to proceed when a person perceives the negligent injury of a close family member. Thus, the mother is a bystander because she heard the car crash and subsequently died upon seeing the injury to her daughter. Remembering the requirements of a physical injury. Champion met that as dying is the ultimate injury; the court did not need to contend with the additional complexity of purely mental damages, such as depression or posttraumatic stress disorder. Second, the mother did not actually see the accident, she heard it. Thus, in announcing this holding, Florida received a broader bystander rule than it otherwise might have if the mother had seen the accident. Lastly, the court is clear to call this a factor test that is enveloped under the "guidepost"[10]of foreseeability. The presence of all these factors does not necessarily mean that the defendant is under a duty, only that the defendant may foresee emotional harm. Zell v. Meek is a bystander case to leave its mark on the impact rule. Zell added to

Champion by stretching the length of time between the injury and its physical manifestation. In Zell, a tenant picked up an unmarked package left on his doorstep. The package was a bomb that exploded and killed the tenant. His daughter had witnessed her father's dying moments. Subsequent investigations revealed that the property manager had received bomb threats at this property in the past and made no warning to the family living there. Immediately after this incident, the daughter experienced purely psychological injuries: insomnia, depression, fear of loud noises, bad dreams, and short-term memory loss. Nine months later, she was diagnosed with several digestive ailments. A medical expert traced these ailments to the daughter's anxious condition produced by the bombing. The Champion court did not face such a difficult issue since the mother died shortly after seeing her daughter. However, in this case, the nine-month interval forced the court to relax the short time requirement implicit in the Champion holding.

In so doing, the court acknowledged any bright line time requirement would be arbitrary. The time between the physical manifestations of the injury and the incident is a factor bearing on causation, not the element of causation itself.

Zell is not nearly as groundbreaking as Champion, then, as bystander actions were already permitted, and physical symptoms of the injury are still required. If Zell is groundbreaking, it is due to the absence of language limiting its holding to bystander cases. Recall from Champion that its factor test does not necessarily bring liability but, rather, only bears on the existence of foreseeability.

Florida does not clearly separate bystander cases from direct victim cases, so the physical manifestation requirement could potentially be applied to direct victim cases. The import of this lack of separation would allow direct victims to bring suit absent an impact, so long as they have physical symptoms to evidence the emotional trauma. This proposition received support in Willis, where the court disapproved of language in Ruttger Hotel Corp. v. Wagner that limited Champion to bystander cases.

Type 3 Freestanding Tort

The freestanding tort exception is a limitation on the impact rule. When a freestanding tort is present in conduct that gives rise to an NIED claim, the impact rule has no application. Generally, a freestanding tort is one where the plaintiff would be able to sue for a cause of action other than a negligence claim without having to prove emotional damages to prevail. In Florida, when the facts support a freestanding tort, the impact rule does not apply because the tort other than the negligence claim creates foreseeability for the defendant. Kush v. Lloyd was the first case in this series. In Kush, a couple had a baby who had the misfortune of being born with genetic abnormalities. The couple wanted to have another child, but out of concern about his potential disabilities, they consulted a doctor. Their doctor misdiagnosed a genetic disorder and incorrectly told the parents that they could have children free of genetic defects. The parents conceived and gave birth to another baby with the same genetic abnormalities. Suing under a negligence theory, the parents sought damages for the mental anguish they now suffered. In allowing for emotional damages, the court reasoned those freestanding torts, such as

defamation and wrongful birth, stand apart from a negligence action, because these torts would lie even without the attendant emotional injury. The emotional damage would then be parasitic to the damage otherwise recoverable in the claim of wrongful birth against the doctor. This reasoning is buttressed by the availability of emotional damages in torts like defamation and invasion of privacy. In those actions, it is wholly foreseeable to the tortfeasor that emotional damages could result. Thus, the impact rule is not needed to prove foreseeability. The parents in Kush had a cause of action for those damages not because they could prove negligence as to their emotional state, but because of the doctor's actions giving rise to the wrongful birth claim. The emotional damage was parasitic to that cause of action. Again, the common theme of foreseeability arises in the analysis to trump the impact rule .

Gracey v. Eaker moved Kush out of hospitals and applied it to a doctor's office setting. In Gracey, a licensed therapist treating a husband and wife as separate patients revealed the confidences of those sessions to all parties, contrary to a statutorily imposed, duty. The court held that the impact rule did not apply, in part because of the Kush reasoning. Just as in Kush, emotional damage is foreseeable because a therapist should realize his patients are entrusting him with their innermost secrets. These cases have shown numerous situations in which foreseeability is clearly proven despite the lack of an impact. The impact rule is a per se rule of foreseeability. Kentucky abolished the impact rule in 2012.

The Flood of litigation never Manifests.

"[T]he underlying basis for the [impact] rule is that allowing recovery for injuries resulting from purely emotional distress would open the floodgates for fictitious or speculative claims." Gracey v. Eaker, 837 So 2d 348, 355 (Fla. 2002) The flood of litigation that was promised in 1893, in International Ocean Telegraph Co. v. Saunders, and in Gracey, NEVER HAPPENS because if it did Kentucky would have seen an increased caseload in the proceeding years after it was abolished. It did not happen.

Current Exemptions to the Impact rule

- Ingesting contaminated food or beverages.
- A psychotherapist who breaches their legal duty of patient privacy and confidentiality.
- An entity that shares the results of an HIV test in violation of F.S. 381.004.
- Victims of intentional torts
- a person who witnesses a close relative suffering a serious injury or wrongful death.
- Freestanding torts, such as negligent stillbirth or wrongful birth. (These mostly occur when there is a special relationship, such as doctor-patient, school-student, etc.)

"In recent years, this Court has had occasion to review the continued vitality of the impact rule, and has consistently reaffirmed that the rule serves as an important safeguard when applied under certain proper circumstances in our judicial system. See, e.g., R.J., 652 So.2d at 363;Gonzalez, 651 So.2d at 674-75. The impact rule is not, however, an inflexible, unyielding rule of law, so sacred that it must be blindly followed without regard to context.

If we were to ascribe such weight to the doctrine, the impact rule itself would exceed the parameters of its underlying justifications. Exceptions to the rule have been narrowly created and defined in a certain very narrow class of cases in which the foreseeability and gravity of the emotional injury involved, and lack of countervailing policy concerns, have surmounted the policy rationale undergirding application of the impact rule. See Tanner v. Hartog, 696 So.2d 705, 708 (Fla. 1997); Kush, 616 So.2d at 422-23." 22 .

Further Exceptions

"In Doe v. Evans, the Florida Supreme Court recognized that a fiduciary duty generally arises in counseling relationships such as those between a priest and a parishioner. 814 So.2d 370, 373-75 (Fla. 2002). And in Gracey v. Eaker, the Florida Supreme Court held that the breach of such a fiduciary relationship is not subject to the impact rule. 837 So.2d 348, 355-56 (Fla. 2002). Appellant's counts seeking recovery against the church hierarchy may be subject to dismissal for many reasons, but not because of application of the impact rule." (quoting)Lotierzo v. Barbarito, 356 So. 3d 846, 847 (Fla. Dist. Ct. App. 2023)

CVS's pharmacist fiduciary dudy

A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relation" see Doe V. Evans 814 so.2d at 37400. Taylor says, "To establish a fiduciary relationship a party must allege some degree of dependency on one side and some degree of undertaking on the other side to advise, counsel, and protect the weaker party" (Cichowskis claimed that). The therapist in kush15 owes one. The Pharmacist clearly owes a fiduciary along with a professional duty in McLeod v W.S. Merrell co , Fla 1965and a duty of care in in Oleckna v. Daytona Disc. Pharmacy (Fla 2015)

To establish a claim for breach of fiduciary duty," *Southtrust Bank and Right Equipment Co. of Pinellas County, Inc. v. Export Ins. Services, Inc., 190 F.Supp.2d 1304 (M.D. Fla., 2002) (holding that an insurance broker and advisor has a fiduciary duty to his client, because of the trust implicit in such a relationship)".* a plaintiff must plead the "existence of a fiduciary duty, and the breach of that duty such that it is the proximate cause of the plaintiff's damages." Gracey v. Eaker, 837 So. 2d 348, 353 (Fla. 2002). The most difficult part of this analysis is determining if a fiduciary duty actually exists. A fiduciary duty is formed when a party is "under

a duty to act for or to give advice for the benefit of another upon matters within the scope of that relation." Doe v. Evans 814 So.2d 370 (Fla. 2002) In an "arms-length transaction," there is no duty to act for the benefit or protection of the other party. Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corp., 850 So.2d 540-542, citing (citation omitted), citing Lanz v. Resolution Trust Corp., 764 F.Supp. 176, 179 (S.D.Fla.1991). A payment, series of payments, or a business relationship is not enough to create the trust and reliance necessary to form a fiduciary duty. See Doe v. Evans 814 So.2d 370; Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corp., 850 So.2d at 540-542; Lanz v. Resolution Trust Corp., 764 F.Supp. at 176.

A payment, series of payments, or a business relationship is not enough to create the trust and reliance necessary to form a fiduciary duty. See Doe v. Evans 814 So.2d 370; Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corp., 850 So.2d at 540-542; Lanz v. Resolution Trust Corp., 764 F.Supp. at 176. Taylor Woodrow Homes Florida, Inc. v. 4/46-A Corp., 850 So.2d 536, 540 (Fla. 5th DCA, 2003). Likewise, ". . . a fiduciary relationship may be implied by law, and such relationships are 'premised upon the specific factual situation surrounding the transaction and the relationship of the parties.'" Doe v. Evans 814 So.2d 370, citing Capital Bank v. MVB, Inc., 644 So.2d 515, 518 (Fla. 3d DCA 1994)

CVS's pharmacist owes a fiduciary duty

Cvs's pharmacist owes a fiduciary duty, who else like him owes one,"An insurance advisor certainly owes his client a fiduciary duty" See Southtrust Bank and Right Equipment Co. of Pinellas County25, Inc. v. Export Ins. Services, Inc., 190 F.Supp.2d at 1304 "A fiduciary relation exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relation" see Doe V. Evans 814 so.2d at 37400

The Florida Bars view on the impact rule.

Q R code, links to the Florida bars journal. Link below.
https://www.floridabar.org/the-florida-bar-journal/so-i-finally-understand-the-impact-rule-but-why-does-it-still-exist/

The Florida bars journal that is linked on the last page, goes on to say,

"Until such time as the Supreme Court heeds Justice Pariente's call for abolition of the impact rule, litigants should not be shy about suggesting to appellate courts that their particular facts may very well present the newest exception on the path to recovery. In the First District, a man's stepchildren recently convinced that court that they fell within the "close family relationship" requirement of the Champion exception, and were allowed to recover damages, even though they were neither "blood" nor adoptive relatives. As the legal world continues to gain tolerance and understanding of the extent and depth of mental and emotional injury, and accepts that these injuries are indeed very real, it appears our Supreme Court will keep pace in allowing victims to recover for them, even if it refuses to take the bold step of abolishing the impact rule altogether.

For now, we can only hope that one day the Supreme Court will answer Justice Pariente's call and recognize that the time has come to abolish the impact rule. While that act may remove a fertile area for law school torts examination questions, abolition will certainly validate the reality of emotional and mental injury, and alleviate the uncertainty created by a rule defined by its exceptions."

Conclusion

This case would certainly meet the definition of a as case where someone owed a fiduciary duty; the pharmacist's main job should have been care of his patients and not his second job as a process server. The phone consultation with questions of identity and updated address overlap both the process servers' interests and CVS'S interests. The aggressive questioning during the CVS phone consultation broke the fiduciary duty, causing distrust with the pharmacist, leading to emotional distribance.

+/

CVS is the respondent superior because the phone consultation that is normally performed by a pharmacist overlapped both in information and in job requirements, both were foreseeable, there for preventable.

The court should make an EXCEPTION, or even strike down the impact rule, and send this case back to district court to be amended.

Respectively submitted,

Christine Cichowski

Stanley Cichowski

4-1-2026 Kevin Cichowski

Christine N. Cichowski

Christine Cichowski

37 Cleveland
court Palm coast
Florida 32137