

SUPREME COURT OF FLORIDA

CASE NO: SC00-153

Lower Tribunal No.: 5D99-1075

DONNA GRACEY, ET AL., vs. DONALD W. EAKER

Petitioners

Respondent

PETITIONER'S REPLY BRIEF

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Kush v. Lloyd, 616 So.2d 415 (Fla. 1992). . . .

PETITIONERS' REPLY BRIEF

COME NOW THE Petitioners and enter this Reply Brief and state as follows:

Respondent's Brief contains no justification for applying the "Impact Doctrine" to the facts of this case. Respondent admits that he had a statutory duty to maintain confidences told to him by the Graceys; and basically admits that he breached that duty. More importantly, he recognizes that the Graceys have indeed experienced mental anguish because of his blatant breach of that duty, but essentially says, "That's too bad," because there was no impact. Therefore the doctor's conduct in violation of his statutory duty, is protected by the application of the Impact Doctrine.

This case is a primary example of exactly why this Court should clarify its decision in *Kush v. Lloyd*, 616 So.2d 415 (Fla. 1992). *Kush* is directly applicable as stated by Petitioners' in their main Brief. Petitioners suggest that the various District Courts should stop certifying different cases involving mental anguish damages to this Court to see if this Court will provide yet another "exception" to the Impact Doctrine.

As stated in Petitioners' main Brief, this Court clearly established, in *Kush*, that when there is a pre-existing legal duty owed to the victim, and the damages experienced are reasonably foreseeable to flow from a breach of that duty, the Impact Doctrine has no application and will not bar such a claim.

This Court cited, as further example of this holding, that "...the Impact Doctrine also generally is inapplicable to recognized torts in which damages often are predominately emotional, such as defamation or invasion of privacy." *Id* at 422. This case meets both of the parameters set forth above in that any physician has an established legal duty of confidentiality, and the damages that would necessarily result from a breach of that duty are clearly foreseeable. In the context of psychiatric care, much like the torts of defamation or invasion of privacy, with a breach of confidentiality the emotional damages are recognizable and foreseeable and therefore do not fall within the area of fictitious, speculative or fraudulent claims that the Impact Doctrine tries to prevent.

Conclusion

Wherefore, Petitioners request that this Court clarify the decision in *Kush* and find that the Graceys do, indeed, have a cause of action worthy of a trial against the Respondent herein.

CERTIFICATE OF FONT

I HEREBY CERTIFY that the Font used in this Petitioners' Reply Brief is Courier New 12.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished this 14th day of April, 2000, via U.S. mail to Griffith J. Winthrop, III, Esq., Jeffrey M. Thompson Esq., Swann, Hadley & Alvarez, P.A., 1031 W. Morse Blvd., Ste. 270, P.O. Box 1961, Winter Park, FL 32790.

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