Legal Update
ROPER TOWNSEND & SUTPHEN
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SOVEREIGN IMMUNITY - STATUTE OF LIMITATIONS REMINDER

Chapter 768.28 contains two important sections which must be considered when determining whether a tort action against a governmental entity has been timely brought. The first, §768.28 (6) requires written notice to the governmental entity and (except as to any claim against a municipality, county or the Florida Space Authority) the Department of Financial Services within three years of the accrual of the claim before suit may be filed. Under the Florida caselaw, a claim accrues when a plaintiff has notice of a possible invasion of his legal rights. *Breitz v. Lykes-Pasco Packing Co.*, 561 So. 2d 1204, 1205 (Fla. 2nd DCA 1990). Thus to be timely, notice must be sent to the alleged negligent entity and DFS (with exceptions) within three years of discovery of an invasion of the plaintiff's legal rights.

Thereafter, Chapter 768.28(14) provides every claim for negligence or wrongful act or omission against the state, one of its agencies or subdivisions pursuant to §768.28 will be forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within 4 years after the claim accrues. Accrual of a claim for purposes of the notice requirement in §768.28(6) and for purposes of the statute of limitations in 768.28(14) occur at the same point in time. Please be cognizant that 768.28(14) provides for a longer statutory period to file a claim in negligence than §95.11(5)(a) which is now only two years.

Please note, there are additional time requirements and deadlines for medical malpractice, contribution and wrongful death. Please contact us with any specific questions or comments.

By: Jeffrey A. Carter

MIDDLE DISTRICT OF FLORIDA UPHOLDS BAN ON FILMING IN GOVERNMENT BUILDING

Recently, on November 15, 2024, a case of some importance in the First Amendment municipal context was decided in *Patrick v. McGuire*, 2024 WL 4803217 (M.D. Fla. Nov. 15, 2024). Plaintiff, Lana Patrick, an independent journalist and activist, visited the Pasco County Tax Collector's Office and recorded her entire visit. According to Patrick, she only filmed areas of the building that were open to the public.

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THOSE PESKY SIDEWALK CASES

Admit it. Whenever you get one of these claims, you look at the photos, roll your eyes, and silently but seemingly loudly and for the umpteenth time, exclaim, "can't people just look where they're walking?" Isn't that just common sense? Isn't it common knowledge - just a matter of living in urban society - that there are sidewalk elevation changes? How are such minor or insignificant elevation changes considered unreasonably dangerous? They're ubiquitous. You think, "pay attention, people. This is your fault." Well, the courts are coming around, especially when shown a photo. You know that old saying, "a picture is worth a thousand words."

Recently, a learned judge granted a city's motion for final summary judgment in *Owens* [Not Magoo] *v. City of Gainesville*. The judge's gaze was directed to a photo of the allegedly offensive sidewalk elevation running between two sidewalk panels and exclaimed, in the court's order, geez, this is open and obvious -- and it is not even a dangerous condition as a matter of law. Therefore, the judge did not even waste words on the maintenance duty, except noting that the city did not breach any duty owed to the plaintiff. The maintenance duty, as you know, is one of the twin duties owed by a landowner to an invitee. Here is a reminder of those duties: to (1) use reasonable care in maintaining the premises in a reasonably safe condition; and (2) give the invitee warning of concealed perils which are or should be known to landowner, and which are unknown to the invitee and cannot be discovered by the invitee through the exercise of due care.

Oh, here is defense counsel's Mona Lisa:

So, you might want to try and give summary judgment a shot in these annoying sidewalk cases. Also, make sure to safely get your steps in today while paying attention to where you are going. Happy walking.

By: David B. Blessing

THE 1st DCA REITERATES AND EMPHASIZES FLORIDA'S LONGSTANDING OPINION THAT NOT EVERY INJURY FROM AN ACCIDENT GIVES RISE TO A CAUSE OF ACTION

In 1954, the Florida Supreme Court ruled:

> Not every injury from an accident gives to the injured party a cause of action for the negligence of someone else. The owner of property is not an insurer of the safety of everyone who comes upon the property under all circumstances. The owner of the property or the one having control of the property was not required to maintain it in such a condition that an accident could not possibly happen. Any person going upon [a] property . . [is] obligated to exercise a reasonable degree of care for his own safety.

Night Racing Ass'n, Inc., v. Green, 71 So. 2d 500, 503 (Fla. 1954).

Recently, the First District Court of Appeal of Florida reiterated the Florida Supreme Court's opinion in dismissing a lawsuit with prejudice against the plaintiff. *See Morris v. Cap. City Bank*, No. 1D2022-1365, 2025 WL 395336 (Fla. 1st DCA Feb. 5, 2025).

In *Morris*, the plaintiff went to visit a drive-through ATM after business hours. *Id.* at *1. She feared her vehicle was too large to fit in the roadway leading up to the ATM, so she decided to walk up to the ATM. *Id.* While walking toward the ATM, the plaintiff slipped and supposedly fell on an oil slick. *Id.* She sued the bank in premises liability. *Id.* The trial court granted the bank's motion for summary judgment on the basis that the bank did not owe the plaintiff a duty to maintain the roadway to the ATM in a way that was safe to those walking on foot. *Id.*

In affirming the trial court's ruling, the First District quoted the Florida Supreme Court's opinion in *Night Racing*. *Id.* at *3. From the records available, the intended use of the drive-through ATM and the roadway leading to it was for access by customers who were operating their vehicles. *Id.* The plaintiff did not present any evidence which showed the ATM or the roadway was intended for pedestrians. *Id.* A landowner does not have liability for a fall which occurs while a party walks on surfaces not designed for walking. *Dampier v. Morgan Tire & Auto, LLC*, 82 So. 3d 204, 206 (Fla. 5th DCA 2012). Therefore, the bank's duty was limited to keeping the roadway to the ATM safe for motor vehicle traffic only. *Id.* The plaintiff's deviation from the intended use, without the bank's knowledge, could not expand the scope of the bank's duty of care. *Id.*

From a practical standpoint, *Morris* and *Night Racing* stand for the proposition that a landowner is not liable in negligence simply because a party is injured while on the landowner's premises. A party must proceed at their own risk while on another's property, and the law does not expect a landowner to be the insurer for an accidental injury a party suffers while engaging in an unintended use of the premises.

By: Kiley C. Smith

THE RISE AND FALL OF THE FEDERAL TRADE COMMISSION'S NON-COMPETE BAN

Just when it seemed like non-compete agreements were headed for the history books, the Federal Trade Commission's (FTC) ban hit a legal roadblock - leaving businesses, workers, and lawyers scratching their heads about what comes next.

In January 2023, during the Biden administration, the FTC proposed a rule that would ban nearly all non-compete agreements. The FTC argued that non-competes hurt workers and harmed competition. The ban aimed to enhance worker mobility and promote fair competition in labor markets. The FTC estimated that the proposed rule could increase wages by nearly $300 billion per year and expand career opportunities for about 30 million Americans. On April 23, 2024, the FTC passed a final rule to ban most non-compete clauses in employment agreements, with some exceptions for senior executive employees. The rule was set to take effect on September 4, 2024.

As expected, business and trade organizations quickly filed lawsuits across the country challenging the FTC's final rule. A lawsuit brought by tax-advisory firm Ryan, LLC, and the U.S. Chamber of Commerce in the Northern and Eastern Districts of Texas sought to set aside the rule. The Texas court ultimately ruled on the merits, vacating and setting aside the rule nationwide, holding that its issuance exceeded the FTC's authority granted by Congress and that the rule was otherwise arbitrary and unpredictable under the Administrative Procedure Act.

Another lawsuit was filed in the U.S. District Court for the Middle District of Florida. In *Properties of the Villages, Inc. v. Federal Trade Commission*, the court issued a preliminary injunction preventing the FTC from enforcing its non-compete rule against the plaintiff. Meanwhile, in the U.S. District Court for the Eastern District of Pennsylvania, the court in *ATS Tree Services, LLC v. Federal Trade Commission* rejected the plaintiff's argument that the FTC had exceeded its statutory authority by adopting the non-compete rule. This Pennsylvania ruling set up a potential Circuit Court split; however, on October 4, 2024, *ATS Tree Services* dismissed the lawsuit, removing the possibility of a conflict between U.S. District Courts. The FTC, still under the Biden administration, appealed both the Florida and Texas rulings in the U.S. Court of Appeals for the Fifth and Eleventh Circuits.

On January 20, 2025, Andrew Ferguson was designated Chairman of the Federal Trade Commission by President Trump. On March 7, 2025, FTC lawyers filed motions requesting a 120-day stay of the agency's appeal of the district court decisions in the Fifth and Eleventh Circuits, which had blocked the FTC's proposed ban on non-competes in the *Ryan* and *Properties of the Villages* cases. Even before becoming Chairman, Andrew Ferguson, as Solicitor General of Virginia, wrote a dissenting statement on June 28, 2024, regarding the Matter of the Non-Compete Clause Rule. Ferguson viewed the FTC's non-compete rule as an overreach of the Commission's power, stating that "it is by far the most extraordinary assertion of authority in the Commission's history."

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The FTC is led by five (5) Commissioners, nominated by the President and confirmed by the Senate, each serving a seven (7)-year term. No more than three (3) Commissioners can be from the same political party. Currently, the FTC has two (2) Commissioners: Andrew Ferguson as Chairman and Melissa Holyoak, who was sworn in as Commissioner on March 25, 2024. Notably, Melissa Holyoak co-authored the dissenting statement with Andrew Ferguson, making her position on the FTC's non-compete ban clear. Once a majority of Commissioners share Ferguson and Holyoak's views, it is likely the non-compete rule will be rescinded.

Although Ferguson has opposed the FTC's non-compete rule, he has recently stated that the FTC will continue to police the abusive and overreaching use of non-compete agreements on an individual basis rather than through broad rulemaking.

By: Pausha Taghdiri

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A few minutes after Patrick entered the office with her camera, one of the employees of the Office handed Patrick a copy of the Office's policy against video recording. The copy of the policy is visible in the video. It states, in relevant part,

> The Pasco County Tax Collector's Office (hereafter "PCTC") will make every effort to accommodate journalists or any other individual(s) who wish to video, photograph, record, film, or interview within the interior of any PCTC facility. This policy is in place to protect the confidentiality of records and documents exempt from public disclosure, to prevent disruptions of the PCTC's legitimate public business and rendering of public services, and to foster a safe and orderly environment for PCTC customers and employees.
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> ....
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> No videotaping, photographing, recording, filming, or interviewing may be conducted inside any PCTC facility by anyone without prior approval of the tax collector. Violators will be requested to cease such activity immediately and/or leave the facility....
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> All requests for approval to videotape, photograph, record, film, or interview must be submitted as far in advance as possible [to the Assistant Tax Collector for Communications and Special Projects]....
>
> Identification numbers and documents, such as passports, driver licenses, ID cards, and Social Security cards or numbers, are confidential in nature and therefore exempt from public disclosure by the PCTC. Videotaping, photographing, recording, or filming personal documents or conversation that contain information exempt from public record is prohibited.

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Despite being handed the policy, Patrick did not stop recording or leave the Office. Ultimately, Patrick was trespassed from the building.

Patrick then filed suit, alleging she was unlawfully trespassed from a public building in violation of her First Amendment rights and retaliated against for filming.

Defendants moved to dismiss. The Court agreed. The Court noted that the Tax Collector's Office was not a traditional public forum. Thus, the government had not opened up the Office as a place for the public to use for expressive activity. The Office could choose to permit access only to those speakers seeking service from the Office. The Court stated that the Office's policy against video recording was reasonable, as its intended purpose was to assist county residents with matters related to government documents. If the Office were unable to protect the confidentiality of its residents' information while they transact with Office employees in the main lobby area, the Office would not be able to serve as many customers at once, disrupting its efficiency.

The Court also noted that the policy was "viewpoint neutral" and still allowed filming with consent. Because there was no First Amendment violation properly alleged, the Court dismissed Plaintiff's First Amendment claims.

By: David R. Jadon

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