

 KeyCite Yellow Flag - Negative Treatment

Abrogation Recognized by [Sierra v. Associated Marine Institutes, Inc.](#),  
Fla.App. 2 Dist., June 18, 2003

753 So.2d 699

District Court of Appeal of Florida,  
Third District.

Pamela G. HOLDERBAUM, individually, as natural parent and guardian of Nicole Amy Holderbaum, a minor, and as Personal Representative of the Estate of Stacy Holderbaum, Deceased, Appellants,

v.

ITCO HOLDING COMPANY, INC., f/k/a Itco Tire Company, Inc., a foreign corporation, Appellee.

No. 3D98-2594. | March 15, 2000.

| Rehearing Denied April 19, 2000.

Parent and guardian of minor child and personal representative of estate of employee murdered by co-employee brought wrongful death action against employer. The Circuit Court, Dade County, [Amy Steele Donner, J.](#), granted summary judgment for employer. Plaintiff appealed and the District Court of Appeal, [Schwartz, C.J.](#), held that employer neither exhibited deliberate intent to injure employee nor acted in manner that was substantially certain to result in injury or death so as to overcome workers' compensation immunity against wrongful death action.

Affirmed.

West Headnotes (1)

[1] **Workers' Compensation**

 **Willful or Deliberate Act or Negligence**

Employer exhibited neither deliberate intent to injure employee nor acted in manner that was substantially certain to result in injury or death by failing to warn employee or to remove co-employee or his weapon from premises prior to fatal shooting that occurred after co-employee threatened employee, so as to constitute an intentional tort and thus overcome employer's workers' compensation immunity under exclusive remedy provision from wrongful

death action against employer. [West's F.S.A. § 440.11\(1\)](#).

[3 Cases that cite this headnote](#)

**Attorneys and Law Firms**

\***699** [Joseph R. Fields, Jr.](#), West Palm Beach; [Marjorie Gadarian Graham](#), Palm Beach Gardens, for appellants.

[Fazio, Dawson, DiSalvo, Cannon, Abers, Podrecca & Fazio](#), Fort Lauderdale, and [David B. Pakula](#), Miami, for appellee.

Before [SCHWARTZ, C.J.](#), and [GREEN](#) and [FLETCHER, JJ.](#)

**Opinion**

[SCHWARTZ](#), Chief Judge.

The plaintiffs are the survivors of a deceased employee. They appeal from an adverse summary judgment upholding the defense of workers' compensation immunity in a wrongful death action against his employer. We affirm.

On orders from his superior, Holderbaum, Quinones was laid off from his job at the Itco Tire Company. When he was informed, Quinones, in the presence of other supervisory employees, threatened Holderbaum's life. Later that day, he made the threat good by murdering <sup>1</sup> Holderbaum \***700** with a pistol the employees knew he kept at the workplace.

The story is a very compelling one indeed, and the employees may have been negligent-perhaps grossly or even culpably so-in, as they said, not taking Quinones or his threats seriously under the circumstances. Nevertheless, we conclude as a matter of law that-objectively viewed as required by [Turner v. PCR, Inc.](#), 754 So.2d 683, 685-88 (Fla. 2000)-their mistakes in failing to remove him or his weapon from the premises or to warn Holderbaum prior to the shooting, neither “exhibit[ed] a deliberate intent to injure [n]or ... [were] substantially certain to result in injury or death” so as to constitute an intentional tort and thus overcome Itco's workers' compensation immunity. [§ 440.11\(1\), Fla. Stat. \(1995\)](#); [Turner](#), 754 So.2d at 687; [Kline v. Rubio](#), 652 So.2d 964 (Fla. 3d DCA 1995), review denied, 660 So.2d 714 (Fla.1995).

In [Boynton v. Burglass](#), 590 So.2d 446 (Fla. 3d DCA 1991), this court held that because, among other things, any

predictions of a person's future dangerousness are necessarily so uncertain, a psychiatrist has no duty of reasonable care to warn a victim about a patient's subsequently realized threats to kill him. Accord [Green v. Ross](#), 691 So.2d 542 (Fla. 2d DCA 1997). *Boynton* is the paradigmatic *a fortiori* case to this one, which involves only lay persons and a monumentally higher standard of liability. See also [Rafferman v. Carnival Cruise Lines, Inc.](#), 659 So.2d 1271, 1272 (Fla. 3d DCA 1995), and cases and authorities cited (severely attenuated Jones Act

liability not present when ship owner fails to anticipate and guard against suicide of “visibly and obviously depressed and abnormal” crewman).

Affirmed.

**All Citations**

753 So.2d 699, 25 Fla. L. Weekly D634

**Footnotes**

- 1 An appeal from the denial of Quinones' application for relief from his 23-year sentence for second degree murder was dismissed in [Quinones v. State](#), 709 So.2d 543 (Fla. 3d DCA 1998)(table).