18. False Imprisonment

“They shut me up in Prose –
As when a little Girl
They put me in the Closet –
Because they liked me ‘still’ –”

– Emily Dickinson, 1951

Introduction

The tort of false imprisonment gives plaintiffs a claim to assert when they are held against their will.

It is tempting to think of false imprisonment as an ancient relic, a tort with only very rare applicability. The examples that come most easily to mind might might be pirates and highwaymen, working in remote places far from the arm of the law. Yet the tort of false imprisonment is relevant all over the landscape of modern life – as close by as department stores and parking garages.

At the outset it is helpful to note that you should not try to make sense of this tort by its name. “False imprisonment” is a double misnomer. First, there is no requirement that the plaintiff be put in prison. All that is necessary is confinement, which might be accomplished without any walls or physical restraints of any kind. For instance, compelling a plaintiff at knifepoint to not move is sufficient confinement for false imprisonment. Second, in so far as people understand the word “false” to mean “not true,” then that is a misnomer as well, because a prima facie case requires true confinement. In the false imprisonment context, think of “false” as meaning wrongful or illegitimate.

The Elements of False Imprisonment

Here is a blackletter statement of false imprisonment:

A plaintiff can establish a prima facie case of false imprisonment by showing the defendant (1) intentionally (2) confined the plaintiff, and
that the plaintiff (3) was aware of the confinement.

Let’s take the elements in turn.

**False Imprisonment: Intent**

The intent required for false imprisonment is the intent to confine. The defendant need not have bad intentions, nor must the defendant intend that the confinement be illegal, tortious, or even improper. Working with the best of intentions and a conviction of being on the right side of the law is perfectly compatible with the requisite intent to confine.

As with the other intentional torts, false imprisonment observes party-to-party transferred intent. If Amy intends to confine Bella, but winds up confining Constance, then Amy has the requisite intent for Constance’s prima facie case against Amy for false imprisonment.

Remember, too, that some courts allow tort-to-tort transferred intent among any of assault, battery, false imprisonment, trespass to land, and trespass to chattels.

**False Imprisonment: Meaning of Confinement**

To be confined for the purpose of false imprisonment, the plaintiff must be restricted to some **closed, bounded area for some appreciable amount of time**.

Confining a person to a room certainly counts, but so does confining a person to a particular city or state. The area need not be strictly delineated. A subway mugger who orders a plaintiff not to run away on threat of being shot effects an actionable confinement regardless of whether the mugging takes place in an enclosed subway car, on a platform, or in the ticketing area. The plaintiff in such circumstances is confined to the space in which she or he is standing, and thus the confinement is actionable.

Even though the area of confinement can be large or small, it must be complete. Freedom of movement must be bounded in all directions. A mere roadblock will not count. Suppose a plaintiff, out for a walk in the city, meets a gang of thugs who, through threats,
prevent the plaintiff from walking on the public sidewalk on Elm Street between 10th Street and 11th Street. If the plaintiff can freely back up and walk somewhere else, then there is no false imprisonment.

Along these lines, a plaintiff cannot use false imprisonment to sue for being wrongly kept out of some particular place. That is to say, the confinement of false imprisonment does not work in reverse. If a plaintiff is not allowed into a certain restaurant or club, there is no false imprisonment. It will not do to say that the area of confinement is “the rest of the world.”

In cases where the confinement is achieved by means of physical barriers, courts often say that there must be no reasonable means of escape. Suppose the defendant locks the door to the room the plaintiff is in. We must ask if there some other reasonable way out. If the sliding-glass door to the patio is open, and if the patio opens onto a golf course, then that’s a reasonable means of escape, and no false imprisonment claim will lie. But if the only means of escape is to jump from a second-story balcony or to crawl through HVAC ducts, then the means of escape is not reasonable, and the plaintiff has a good claim for false imprisonment.

There is no minimum amount of time for a valid confinement. Typically, courts will say that the confinement need only be for an “appreciable time.” A confinement of one minute, for example, would be much more than enough.

The duration of the confinement may become a live issue in the context of an affirmative defense of consent. For instance, amusement park patrons have consented to a confinement when they board a dark ride and pull down the lap bar. But a confinement for how long? If the ride stops, must the park release the lap bars immediately and let everyone go? Or can they take some time to re-start the ride before they must release patrons? That question is turns on the scope of the consent, and it could be a close issue that requires a jury to resolve.
False Imprisonment: Method of Confinement

In a false imprisonment case, the confinement can be accomplished by a number of means. The most straightforward is by physical barriers, such as with walls or fences. But false imprisonment can also be accomplished by force or imminent threat of force. Threatening a plaintiff at gunpoint is an obvious example; however, the threat need not be against the plaintiff. The threat could be directed at a third person. Some authorities say the third person must be a family member or someone who is immediately present, but one imagines, if pressed, courts would permit a false imprisonment cause of action for threats to strangers, so long as they were serious and credible.

One aspect of the doctrine that is crystal clear is that the threat must be imminent. Telling a person to stay put – or else suffer injury the next day – would not be considered confinement within the meaning of the tort. The fact that the false imprisonment tort does not allow recovery in such a situation seems to imply that, in the view of the law, a would-be plaintiff should go and seek police involvement before the threat matures.

The barriers, force, or threat need not be directed at persons, but can also be aimed at the plaintiff’s property. A plaintiff who is “free” to walk away only by surrendering chattels is not free at all under the eyes of false-imprisonment law. Suppose a drunk and belligerent party host refuses to return the plaintiff’s coat when the plaintiff is ready to leave the party. That deprivation of property will count as confinement for false imprisonment.

Another recognized method of confinement is improper assertion of legal authority. Flashing a fake police badge and informing a plaintiff that she or he is under arrest is an obvious example. But improper assertion of legal authority could be made by a real peace officer with a real badge. In the real world, suits against individual police officers for false imprisonment are rare. But the reason has nothing to do with the doctrine of false imprisonment itself. Individuals are frequently judgment proof, plaintiffs are often not credible witnesses, and state statutes may shield law enforcement
officers from suit. But as far as common-law tort doctrine goes, a police officer making an invalid arrest is liable for false imprisonment.

A common context for false imprisonment accomplished by improper legal assertions is with security officers in retail stores, who may falsely tell suspected shoplifters that they are under a legal obligation to stay on the premises and answer questions, or that they must wait for the police to arrive. Often, store security has no legal basis upon which to make such a claim (although in any given jurisdiction, store security officers might have an authentic legal right to detain people through a statute or a common law “shopkeeper’s privilege”).

The confinement does not need to be accomplished by an overt act. An omission might do the trick under certain circumstances. If the defendant is under an existing obligation to act, then the omission to release the plaintiff can be false imprisonment. For example, lawfully confined inmates must be released when their sentences are up, and a jailer who omits to unlock the cell when required to do so becomes liable for false imprisonment. Similarly, an amusement park patron pulling down a locking lapbar on a roller coaster has consented to a confinement. But if the ride operator refuses to release the lapbar when the ride is over, there is liability for false imprisonment.

**False Imprisonment: Awareness**

In addition to intent and confinement, the balance of authority adds the requirement that the plaintiff must be aware of the confinement.

Because of the awareness requirement, an unconscious person locked in a room cannot, upon waking up to an open door, make out a case for false imprisonment. Many have noted that the awareness requirement in the false imprisonment tort is consonant with tort’s emphasis on an individual’s sense of autonomy.

According to convention, however, there is an exception to the awareness requirement. Authorities commonly state, without elaboration, that if the prisoner is harmed by the confinement, then awareness is not required. This exception creates something of a
puzzle: It’s not so easy to imagine a situation in which a plaintiff is harmed by a confinement of which she or he is unaware and where the confinement itself is the essence of the harm, as opposed to a battery. Suffice it to say, it must not come up very often.

**False Imprisonment: Scope of Privilege or Consent**

Privilege or consent is an affirmative defense to false imprisonment. And in many cases, the scope of that privilege or consent is likely to be crucial. Consider some examples: Jailers who confine their inmates have a legal privilege to do so. And riders on common carrier transport have consented to a confinement. But at what point does privilege or consent run out?

**Case: Sousanis v. Northwest Airlines**

This case presents false imprisonment in a thoroughly modern context: an airplane on the tarmac that’s going nowhere.

*Sousanis v. Northwest Airlines*

United States District Court for the Northern District of California

March 3, 2000


Chief Judge MARILYN HALL PATEL:

On May 11, 1999, plaintiff Marti Sousanis filed suit in California state court against Northwest Airlines and twenty “Doe” defendants alleging various tort and contract claims pertaining to a detained flight. On June 17, 1999, defendant Northwest removed the action to this court on diversity grounds.

Plaintiff’s first amended complaint (“complaint”) states the following claims against defendants: (1) breach of contract; (2) breach of the covenant of good faith and fair dealing; (3) intentional infliction of emotional distress; (4) false imprisonment; (5) negligence; (6) disability discrimination in violation of California Civil Code section 54.1 et seq.; (7) civil rights discrimination in violation of the Unruh Act, California Civil Code section 51 et seq.; (8) violation of California’s Unfair
Competition statute, Business and Professions Code sections 17200 and 17201; and (9) declaratory and injunctive relief.

BACKGROUND

Plaintiff, a San Francisco resident, spent her 1998 winter holiday in Detroit. In November 1998, she purchased a $540 round-trip airline ticket from Northwest. Plaintiff departed San Francisco on December 23, 1998 and was scheduled to return on Saturday January 2, 1999.

Detroit experienced a blizzard during the New Year’s weekend, and Detroit Metro Airport was blanketed with snow and ice. Plaintiff boarded her homebound flight as scheduled. However, the flight was detained and ultimately canceled due to the inclement weather. The next day, plaintiff obtained a boarding pass for Northwest Flight Number 992. This flight was scheduled to depart in the early afternoon, but worsening weather caused further delays. Plaintiff claims that Northwest made a series of disingenuous announcements about when it expected the flight to leave.

At 6:00 p.m. on January 3, Northwest instructed the passengers of Flight 992 to board the aircraft. Once the passengers were seated, the doors were secured but the plane never took off. For approximately six hours, Flight 992 remained parked at the gate or on the runway due to weather-related and mechanical problems.

During the protracted wait, Northwest flight attendants repeatedly instructed the passengers to remain seated with their seat belts fastened. Plaintiff alleges that he suffers a chronic back condition that worsens if she is forced to sit for too long. She contends that her physical therapist advises that she stand and stretch at least every thirty minutes. In addition, plaintiff purports to have panic and anxiety attacks when she anticipates an impending back spasm. Plaintiff claims that she began to feel her back tighten after some period of remaining in her seat on Flight 992. So, plaintiff stood up in her row to stretch her back. According to plaintiff, a flight attendant ordered her to sit down because the seat belt sign was illuminated. Plaintiff alleges that
she attempted to explain her condition to the flight attendant, but that she would not listen. Instead, she summoned other flight attendants, including the supervising flight attendant.

The supervising flight attendant advised plaintiff that her refusal to comply with flight crew instructions constituted a violation of federal law. Plaintiff alleges that she again tried to explain to the supervising flight attendant her medical need for special accommodation. The supervising flight attendant handed plaintiff a notice advising her that passengers who interfere with the operation of the aircraft are subject to arrest. After her altercation with the supervising flight attendant, plaintiff did not attempt to stand up again. Plaintiff recalls being in tears and in pain for the remainder of the approximately six hour wait.

Plaintiff asserts that during the wait, several passengers occasionally stood up and/or walked to the restroom. She also notes that Northwest crew members were able to move freely about the plane. At around midnight, Northwest canceled Flight 992 and the passengers deplaned. On Monday, January 4, 1999, plaintiff returned to San Francisco on Northwest Flight Number 929.

LEGAL STANDARD

A motion to dismiss for failure to state a claim will be denied unless it appears that the plaintiff can prove no set of facts which would entitle him or her to relief.

DISCUSSION

The tort of false imprisonment is defined in California as “the nonconsensual, intentional confinement of a person, without lawful privilege, for an appreciable length of time, however short.” *Molko v. Holy Spirit Asm.*, 46 Cal.3d 1092, 1123 (1988). Plaintiff alleges that she was detained against her will in her seat for a period of approximately six hours, while other passengers were occasionally permitted to stand, stretch and use the lavatories as the aircraft sat on the tarmac. She argues that while she did consent to boarding the aircraft initially, she did not consent to being confined to her seat during the long delay. Defendant asserts that plaintiff consented to remaining in her
seat while the seat belt sign was illuminated as a condition of boarding the aircraft, and could not, as a matter of law, withdraw it.

Both plaintiff and defendant rely on *Abourezk v. New York Airline, Inc.*, 705 F.Supp. 656 (D.D.C. 1989) to support their positions. While not exactly on point, it presents the closest factual scenario to the case at bar in an area of sparse precedent. There, the court held that the passenger plaintiff was not falsely imprisoned when he was not allowed off an airplane which was delayed on the ground for three hours because of inclement weather at the destination airport. The delay had caused the plaintiff to miss his appointment, thus rendering his trip moot, so he asked to deplane while the aircraft was waiting in the takeoff line. The pilot refused, and the plane eventually flew on to New York.

Plaintiff does not allege that she asked to deplane, only that she be allowed to stand, stretch and move about. The pilot in this case had full and lawful authority to control the actions of the passengers for their own safety. See 14 C.F.R. § 121.533. Plaintiff states in her complaint that the captain kept the seat belt sign illuminated for virtually the entire delay. Therefore, defendant was acting pursuant to federal law in confining plaintiff to her seat, and plaintiff could not withdraw her consent. The *Abourezk* court explained that the plaintiff’s agreement with the airline did not provide that he “could unilaterally determine that he should be deplaned in circumstances such as those presented herein.” Similar to *Abourezk*, here plaintiff’s agreement with defendant did not allow for her to withdraw her consent to obeying federally mandated safety rules. Defendant was acting lawfully by confining plaintiff to her seat within the aircraft while the seat belt sign was illuminated. The court finds that plaintiffs has failed to plead the elements required to state a false imprisonment claim, and thus dismisses that claim with prejudice.
CONCLUSION

For the foregoing reasons, the court GRANTS defendant’s motion to dismiss. Plaintiff’s first, second, third, and fourth claims are DISMISSED WITH PREJUDICE. Her fifth through ninth claims are DISMISSED WITH PREJUDICE insofar as they are not cognizable under California law.

IT IS SO ORDERED

Questions to Ponder About Sousanis v. Northwest Airlines

A. The court found that the plaintiff “failed to plead the elements required to state a false imprisonment claim.” Which element of the prima facie case do you think the court believed was missing?

B. The recitation of the elements of false imprisonment given by the court includes that the confinement be “nonconsensual.” What difference would it have made, if any, if the court had followed the traditional formulation of the law that sees consent as an affirmative defense, rather than holding that lack of consent is part of a prima facie case?

C. The court’s decision appears to be based in large part on the observation that “[t]he pilot in this case had full and lawful authority to control the actions of the passengers for their own safety.” In support of this, the court cites 14 C.F.R. §121.533. Here is the complete text of that regulation:

§121.533 Responsibility for operational control: Domestic operations.

(a) Each certificate holder conducting domestic operations is responsible for operational control.

(b) The pilot in command and the aircraft dispatcher are jointly responsible for the preflight planning, delay, and dispatch release of a flight in compliance with this chapter and operations specifications.

(c) The aircraft dispatcher is responsible for—

(1) Monitoring the progress of each flight;
(2) Issuing necessary information for the safety of the flight; and

(3) Cancelling or redispating a flight if, in his opinion or the opinion of the pilot in command, the flight cannot operate or continue to operate safely as planned or released.

(d) Each pilot in command of an aircraft is, during flight time, in command of the aircraft and crew and is responsible for the safety of the passengers, crewmembers, cargo, and airplane.

(e) Each pilot in command has full control and authority in the operation of the aircraft, without limitation, over other crewmembers and their duties during flight time, whether or not he holds valid certificates authorizing him to perform the duties of those crewmembers.

Does the cited authority support the court’s statement?

**Case: Montejo v. Martin Memorial**

This case presents a different modern context – hospitals privately deporting undocumented immigrant patients who cannot pay their medical bills. An article by Professor Kit Johnson, an immigration scholar, provides some helpful context:

Federal law requires hospitals to treat patients in need of emergency medical care regardless of whether they are lawfully present in the United States. And hospitals are prohibited from discharging those patients unless and until there is an assurance that their continuing medical needs will be met by another facility. Yet federal law does not dictate what can and should be done with undocumented migrants after their need for emergency care has passed but their need for ongoing medical care lingers. Nor is there federal funding for long-term care of undocumented migrants, unlike the Medicaid system’s reimbursements for citizens.

Several hospitals have decided to repatriate undocumented patients needing long-term
medical care at the hospitals’ expense. That is, the hospitals hire transport to return these individuals to the care and custody of their native countries.


Montejo v. Martin Memorial

District Court of Appeal of Florida, Fourth District
August 23, 2006

935 So.2d 1266. Montejo Gaspar MONTEJO, as Guardian of the person of Luis Alberto Jimenez, Appellant, v. MARTIN MEMORIAL MEDICAL CENTER, INC., Appellee. No. 4D05-652.

Chief Judge W. MATTHEW STEVENSON:

Montejo Gaspar Montejo, the guardian of Luis Alberto Jimenez, appeals an order dismissing with prejudice his false imprisonment claim against Martin Memorial Medical Center, Inc. Because Martin Memorial was not cloaked with absolute immunity from civil liability when acting pursuant to a void court order, we reverse the judgment of the trial court and remand for further proceedings.

In February 2000, Luis Alberto Jimenez, an undocumented native of Guatemala who was living and working in Florida, sustained brain damage and severe physical injuries as a consequence of a car crash. Jimenez was transported to Martin Memorial Medical Center and remained there until June 2000, when he was transferred to a skilled nursing facility. The injuries suffered by Jimenez rendered him incompetent and a circuit court judge appointed Montejo guardian of Jimenez’s person and property.

On January 26, 2001, Jimenez was readmitted to Martin Memorial on an emergency basis and, as of November 2001, was still incapacitated and still receiving medical care at Martin Memorial. Around this time, Montejo filed a guardianship plan, indicating Jimenez would require twenty-four hour care at a
hospital or skilled care facility for the next twelve months. As the costs of Jimenez’s medical care were mounting, Jimenez was indigent, and Medicaid had refused to pay because he was an illegal alien, Martin Memorial intervened in the guardianship proceedings. In its petition, Martin Memorial claimed the guardian had failed to ensure Jimenez was in the best facility to meet his medical needs and the hospital was not the appropriate facility to provide the long-term rehabilitative care required. Martin Memorial sought permission to discharge Jimenez and have him transported to Guatemala for further care. Pursuant to federal law, in order to discharge Jimenez, Martin Memorial was required to demonstrate appropriate medical care was available.

On June 27, 2003, following a hearing, the circuit court granted Martin Memorial’s petition, directing the guardian to refrain from frustrating the hospital’s plan to relocate Jimenez to Guatemala and authorizing the hospital to provide, at its own expense, “a suitable escort with the necessary medical support for the Ward’s trip back to Guatemala.”

Specifically, the court found the guardian had failed to act in Jimenez’s best interests “by allowing the Ward to remain in the inappropriate residential setting of an acute care hospital” and thus ordered that the guardian “shall consent to, fully cooperate in and refrain from frustrating the Hospital’s discharge plan to relocate the Ward back to Guatemala” and that the hospital “shall, at its own expense, provide a suitable escort with the necessary medical support for the Ward's trip back to Guatemala.”

On July 9, 2003, the same day that his motion for rehearing was denied, Montejo filed a notice of appeal directed to the circuit court’s order. At the same time that he filed the notice of appeal, Montejo filed a motion to stay the court’s June 27, 2003 order. According to Montejo, although the circuit court ordered Martin Memorial to file a response to the motion to stay by 10:00 a.m. the following day, sometime before 7:00 a.m., the hospital took Jimenez to the airport via ambulance and transported him by private plane to Guatemala.
In an opinion issued on May 5, 2004, this court reversed the order that had “authorized” Martin Memorial to transport Jimenez to Guatemala. See Montejo v. Martin Mem’l Med. Ctr., Inc., 874 So.2d 654 (Fla. 4th DCA 2004). In the opinion’s final paragraph, the panel wrote that it was reversing not only because there was insufficient evidence that Jimenez could receive adequate care in Guatemala, but also because “the trial court lacked subject matter jurisdiction to authorize the transportation (deportation) of Jimenez to Guatemala.”

In September 2004, Montejo filed a lawsuit, alleging Martin Memorial’s confining Jimenez in the ambulance and on the airplane amounted to false imprisonment and seeking damages for the same. Martin Memorial filed a motion to dismiss or for judgment on the pleadings, arguing (1) that Montejo lacked standing and (2) that Montejo had not and could not state a cause of action because he had not and could not demonstrate the detention was unreasonable and unwarranted—a necessary element of a claim for false imprisonment. With regard to the latter argument, Martin Memorial insisted the detention could not be unreasonable and unwarranted because its transporting Jimenez to Guatemala was done pursuant to a then-valid court order and, as such, its actions were afforded immunity. Following a hearing, the trial court granted Martin Memorial’s motion and dismissed Montejo’s false imprisonment suit with prejudice. This appeal arises from that order of dismissal.

Montejo insists the dismissal of his false imprisonment claim cannot be sustained upon either the theory that he lacked standing or that he had not and could not state a cause of action because Martin Memorial’s actions were somehow cloaked with immunity. To begin, we find Montejo had standing to bring the false imprisonment claim and reject without further comment Martin Memorial’s arguments to the contrary.

This, then, brings us to the matter of whether Martin Memorial’s transporting Jimenez to Guatemala could provide the foundation for a false imprisonment claim despite the fact that such actions were taken in reliance upon the circuit court’s June 27, 2003 order. The question we must decide is whether a
litigant is entitled to “immunity” from a false imprisonment claim for actions taken in reliance upon an order that is later determined to have been entered in the absence of subject matter jurisdiction. We conclude that, under existing Florida law, the answer is no and that the cause of action in the instant case may proceed.

The elements of a cause of action for false imprisonment have been stated in various ways by Florida courts, but, essentially, all have agreed that the elements include: 1) the unlawful detention and deprivation of liberty of a person 2) against that person’s will 3) without legal authority or “color of authority” and 4) which is unreasonable and unwarranted under the circumstances. See *Johnson v. Weiner*, 155 Fla. 169 (1944); *Jackson v. Navarro*, 665 So.2d 340, 341 (Fla. 4th DCA 1995); *Everett v. Fla. Inst. of Tech.*, 503 So.2d 1382, 1383 (Fla. 5th DCA 1987); *Kanner v. First Nat’l Bank of S. Miami*, 287 So.2d 715, 717 (Fla. 3d DCA 1974). In *Johnson*, the Florida Supreme Court stated that the element of legal authority may be demonstrated by irregular or voidable process, but “[v]oid process will not constitute legal authority within this rule.” It is equally clear that Florida law holds that an order entered in the absence of subject matter jurisdiction is void. In the prior opinion in this case, this court held that the circuit court judge lacked subject matter jurisdiction to authorize the hospital to transport Jimenez to Guatemala.

Initially, Martin Memorial contends that Montejo cannot state a cause of action for false imprisonment because the alleged confinement in the ambulance and plane was performed in furtherance of a court order and “is protected by the absolute immunity related to judicial proceedings.” In support of this argument, Martin Memorial cites *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Insurance Co.*, 639 So.2d 606 (Fla.1994), and *American National Title & Escrow of Florida, Inc. v. Guarantee Title & Trust Co.*, 748 So.2d 1054 (Fla. 4th DCA 1999). In *Levin*, the insurer represented to the court that one of the firm’s attorneys would be called as a witness in the bad faith litigation; as a result, the firm was disqualified from the representation. When the insurer failed to follow through,
the firm filed a claim for tortious interference with a business relationship. The insurer insisted the claim was barred by the litigation privilege. The Florida Supreme Court agreed, writing that “absolute immunity must be afforded to any act occurring during the course of a judicial proceeding ... so long as the act has some relation to the proceeding.” 639 So.2d at 608.

In *American National Title & Escrow*, a law firm representing two title insurers obtained a temporary injunction and an order appointing a receiver and was sued for abuse of process related to the court-appointed receiver’s entry into the business offices and the president’s home to obtain records. This court affirmed the trial court’s entry of summary judgment in favor of the law firm because the misconduct alleged was done “pursuant to the receivership” and was therefore protected by the absolute immunity afforded conduct related to judicial proceedings. 748 So.2d at 1056. This court stated:

Appellants’ argument that Levin should be limited to publications or communications during litigation has no merit. Prior to *Levin*, the court had already decided that statements amounting to perjury, libel, slander, and defamation were not actionable. The essence of *Levin* was its extension of absolute immunity to acts taken during the proceeding, not just statements made therein. The acts taken here were all done pursuant to the receivership and the order of authority to the receiver.

In the instant case, we cannot agree that Martin Memorial’s alleged misconduct occurred “during the course of the judicial proceedings” such that the litigation privilege discussed in *Levin* and *American National Title & Escrow* would apply. In discussing the rationale for the litigation privilege, the court in *Levin* explained:

In balancing policy considerations, we find that absolute immunity must be afforded to any act occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other
tortious behavior such as the alleged misconduct at issue, so long as the act has some relation to the proceeding. The rationale behind the immunity afforded to defamatory statements is equally applicable to other misconduct occurring during the course of a judicial proceeding. Just as participants in litigation must be free to engage in unhindered communication, so too must those participants be free to use their best judgment in prosecuting or defending a lawsuit without fear of having to defend their actions in a subsequent civil action for misconduct.

Here, Martin Memorial’s actions were taken neither during the course of the judicial proceedings nor in an effort to prosecute or defend its lawsuit. Unlike American National Title & Escrow, where the court appointed a receiver to take control of the business for the purposes of obtaining records and conserving assets which were the subject of the litigation, the court in the instant case merely allowed Martin Memorial to proceed on its own chosen course of action, which was to be taken after the judicial proceedings were concluded. In our view, to afford Martin Memorial absolute immunity from potential tort liability under the circumstances of this case would be an unwarranted and improper extension of the litigation privilege. Further, we do not believe that the litigation privilege discussed in Levin would apply to the instant case where the court entering the order lacked subject matter jurisdiction and the order acted upon was void.

Martin Memorial further suggests that because it acted in reliance on the court order, it should be cloaked with qualified or quasi-judicial immunity to the same extent as that afforded to state agents executing the order of a trial court. We disagree. Those authorities which suggest that the immunity to be afforded those who execute the judge’s order should be co-extensive with the immunity afforded the judge—reason that those who execute court orders are “integral parts of the judicial process” and that “[the] fearless and unhesitating execution of court orders is essential if the court’s authority and
ability to function are to remain uncompromised,” see Coverdell v. Dep’t of Social & Health Servs., Wash., 834 F.2d 758, 765 (9th Cir.1987) (finding child protective services worker who took custody of child pursuant to court order, but without requisite notice to parent or her attorney, was immune from suit) (quoting Briscoe v. LaHue, 460 U.S. 325, 335 (1983)), and thus hold that “‘official[s] charged with the duty of executing a facially valid court order enjoy [ ] absolute immunity from liability for damages in a suit challenging conduct prescribed by that order,’ “ see Turney v. O'Toole, 898 F.2d 1470, 1472 (10th Cir.1990) (quoting Valdez v. City & County of Denver, 878 F.2d 1285, 1286 (10th Cir.1989)). See also Zamora v. City of Belen, 383 F.Supp.2d 1315, 1326 (D.N.M.2005) (“[I]t is irrelevant to the executing officer’s absolute immunity from suit under § 1983 if the court order violates a statute, or is erroneous or even unconstitutional, as long as it is ‘facially valid.’ “) (quoting Turney, 898 F.2d at 1473). Florida law is consistent with the federal authorities on this issue. See Willingham v. City of Orlando, 929 So.2d 43, 49 (Fla. 5th DCA 2006) (citing a number of federal cases, including Valdez, and recognizing that “so long as a warrant is valid on its face, [a state agent] is entitled to an absolute grant of immunity springing from the judicial immunity of the judicial officer who issued the warrant”). In the instant case, Martin Memorial was not an agent of the government executing an order of the court.

In the present case, by procuring and obtaining the order allowing the deportation of Jimenez, Martin Memorial was seeking the vindication or enforcement of a purely private right. Cases in other jurisdictions have held that in instances where the object of the detention (i.e., false imprisonment) of an individual is for the protection or enforcement of a private right, the person procuring the detention has no immunity from a claim for money damages where the court issuing the order has exceeded its jurisdiction. The rationale for this rule was explained in Hamilton v. Pacific Drug Co., 78 Wash. 689 (1914), a case in which the court allowed a false imprisonment suit to proceed where the defendant procured a warrant for the
plaintiff’s arrest as an “absconding debtor” and the lower court had no jurisdiction to authorize the arrest:

It is argued that, since the arrest was upon a warrant authorized by order of the superior court, the appellant is exonerated from liability, even though the law at the present time does not authorize the arrest. In support of this position a number of cases are cited, all but one of which appear to have been where the arrest was made in a criminal proceeding. There, the party complaining and setting the machinery of the law in motion, which results in the arrest of a person, is acting, not on his own account or for his own private benefit, but for the public, enforcing the public’s right to have the public law obeyed. A rule of law which would exonerate from liability a person causing an arrest in a criminal proceeding when acting without malice, and with probable cause, even though there be no law justifying the arrest, is not applicable where the arrest is caused for the purpose of enforcing a claim of private right. While there is some confusion in the authorities, and this distinction has not always been recognized, it would seem, nevertheless, that it is supported by reason. Where, in a civil case, a party causes his adversary to be arrested unlawfully, a stricter rule of liability should obtain than where a citizen inspiring the arrest has been actuated by public interest solely. A person who causes the arrest of another in a civil proceeding must answer in damages, even though the arrest was in pursuance of an order of court, when the court issuing the order has exceeded its jurisdiction, or had no authority to do so.

See also Yahola v. Whipple, 189 Okla. 583 (1941) (allowing a cause of action for false imprisonment to proceed where the plaintiff’s detention was at the instance of a void court order procured by the defendant); Pomeranz v. Class, 82 Colo. 173
(1927) (finding a receiver and his attorney liable for false imprisonment damages as a consequence of procuring a void order adjudging the plaintiff guilty of contempt notwithstanding the immunity of the judge and the officer serving the warrant of arrest). The results in the foregoing cases are consistent with Florida law, since a void judgment does not suffice as “legal authority” or “color of authority” within the elements of a cause of action for false imprisonment. See Johnson, 19 So.2d at 700; Jackson, 665 So.2d at 341; see also Jibory v. City of Jacksonville, 920 So.2d 666 (Fla. 1st DCA 2005) (holding that a false imprisonment claim would lie against the city where the warrant upon which the plaintiff was arrested was void), review dismissed, 926 So.2d 1269 (Fla.2006).

In conclusion, we note that in order for a plaintiff to recover on a false imprisonment claim, all of the elements must be proven. Here, while the issue of whether Martin Memorial acted with legal authority may be resolved as a matter of law, the trier of fact must determine as a matter of fact whether Martin Memorial’s actions were unwarranted and unreasonable under the circumstances. See Rivers v. Dillards Dep’t Store, Inc., 698 So.2d 1328 (Fla. 1st DCA 1997) (holding that even where some authority to restrain liberty exists, the reasonableness of the procedures followed may present a question of fact). Accordingly, we reverse the order dismissing Montejo’s false imprisonment suit and remand for further proceedings.

Reversed and Remanded.

GUNTHER and TAYLOR, JJ., concur.

Questions to Ponder About Montejo v. Martin Memorial

A. Under Florida, confinement is not actionable if a jury determines it to be reasonable or warranted under the circumstances. This is at odds with the traditional formulation, which allows no such escape from liability. Dan B. Dobbs has written that false imprisonment “regresses a dignitary or intangible interest, a species of emotional distress or insult that one feels at the loss of freedom and the subjugation to the will of another.” Is Florida’s formulation better, providing needed flexibility in the tort? Or does the tort of false
imprisonment lose its moral grounding in autonomy and liberty interests when one person can confine another when reasonable under the circumstances?

B. If it is tortious for hospitals to deport indigent patients, and if no other facilities will take them, what should hospitals do about their indigent patients? If you were the hospital’s attorney, what would you advise?