

IN THE SUPREME COURT OF FLORIDA

CASE NO. 65,155

OPAL F. HUDSON, as Personal
Representative of the Estate
of EULA HUDSON, Deceased,

Petitioner,

vs.

KEENE CORPORATION, etc.,
et al.,

Respondents.

[Handwritten signature]
OCT 27 1965
CLERK, SUPREME COURT
BY *[Signature]* Chief Deputy Clerk

PETITIONER HUDSON'S BRIEF ON THE MERITS

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STATEMENT OF THE CASE AND FACTS

The Court has exercised its discretionary jurisdiction to review a decision of the District Court of Appeal, First District, rendered March 8, 1984. Hudson v. Keene Corporation, 445 So.2d 1151 (Fla. 1st DCA 1984) (Appendix, p.1.). The basis for the Court's jurisdiction is the express and direct appellate conflict. Fla. R. App. P. 9.030(a)(iv).

For clarity and convenience, we set out in the next three pages a statement of the case and facts similar to that made in the jurisdictional brief.

The Decedent

This is an asbestos disease case. A welder the whole time, Ela Hudson worked in shipyards from 1942 through 1953. (Deposition of Ela Hudson, March 19, 1981, pp.5, 10: hereinafter "Hudson 3/19/81 depo".) As a welder, he did not do insulation work, but worked near the asbestos insulation workers. (Hudson 3/19/81 depo., pp.10, 11, 34). And, he, personally, could recall seeing the initials "JM" on certain asbestos products used by the insulation workers (Hudson 3/19/81 depo., pp. 11, 36-7).

The Lawsuit

The First District's substituted opinion accurately states that Ela Hudson's asbestosis was diagnosed in March 1977. Less than four years later, on November 12, 1980, Mr. Hudson timely brought suit against Johns-Manville Sales Corp. only. He died on July 14, 1981. On November 2, 1981, a wrongful death claim was

filed (by amended complaint) against the original defendant, Johns-Manville Sales Corp., and the respondent asbestos producers were named as additional defendants.

The Summary Judgment

The respondent asbestos producers moved for summary judgment. They claimed the wrongful death action was barred, as against them, because the four-year personal injury statute of limitations period had run prior to Mr. Hudson's death. Johns-Manville Sales Corp., against whom Mr. Hudson had filed suit within four-years of learning of the asbestosis, did not move for summary judgment. The trial court granted summary judgment and Mrs. Hudson, as personal representative, appealed. While the appeal was pending, all Johns-Manville entities filed for reorganization and the trial and appellate level proceedings were stayed as to them only.

The Issue Below

The First District was asked to decide whether the running of the personal injury limitations period during Mr. Hudson's lifetime operated to bar a wrongful death action timely brought after his death. Elia Hudson's asbestosis was diagnosed in March of 1977. Within the four-year limitations period prescribed by Section 95.11(3), Florida Statutes, he sued Johns-Manville Sales Corp., but not the respondents. He died in July 1981 and less than 4 months later (with 20 months remaining on the wrongful death limitations period) this wrongful death action was filed by

amended complaint. The issue: Did the running of the personal injury limitations period against Ela Hudson himself prevent the wrongful death claim from coming into being for the benefit of his widow?

The Ruling Below

The First District cited this Court's decision in Variety Children's Hospital v. Perkins, 445 So.2d 1010 (Fla.1983) and declared:

Because of that decision we are bound to conclude the circuit judge in the present case properly granted appellees' motion for summary judgment, because under the supreme court interpretation of the statutory language in Perkins, Ela Hudson would not have been able to maintain an action against appellees if death had not ensued due to the running of the limitations period with regard to the personal injury suit.

Hudson, 445 So.2d at 1153. The First District so held, although this Court did not reach the statute of limitations issue present in Perkins, although Justices Ehrlich and Overton in their concurring opinion in Perkins advised against reading the decision too broadly, and although the Perkins court declared an intention to adopt the majority interpretation of the statutory language. On this latter point Dean Prosser, on whom the Perkins court relied, declares:

As to the defense of the statute of limitations...the considerable majority of the courts have held that the statute runs against the death action only from the date of death, even though at that time the decedent's own action would have been barred while he was living.

W. Prosser, Law of Torts, S.127, p.912 (4th ed. 1971) (footnotes omitted).

The Statute

The statute in question is Section 768.19, Florida Statutes, which reads:

When the death of a person is caused by the wrongful act, negligence, default, or breach of contract or warranty of any person, including those occurring on navigable waters, and the event would have entitled the person injured to maintain an action and recover if death had not ensued, the person or watercraft that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act notwithstanding the death of the person injured, although death was caused under circumstances constituting a felony.

The dispute over the proper interpretation of the emphasized language, in light of the remedial purpose of the Florida wrongful death act, presently forms the basis for a substantial conflict of Florida appellate decisions. This Court has so noted by accepting jurisdiction.

ARGUMENT

POINT ON APPEAL

A WRONGFUL DEATH ACTION IS TIMELY IF BROUGHT WITHIN TWO YEARS AFTER DEATH, EVEN WHEN THE DECEDENT'S OWN RIGHT TO SUE WAS TIME-BARRED PRIOR TO DEATH.

The Survivors' Right To Sue Accrues Only At Death.

When a wrong causes death, the survivors are granted a right of action against the wrongdoer. Section 768.16-27, Florida Statutes. There is a two-year limitation period for such actions. Section 95.11(4)(d), Florida Statutes. The courts have consistently held that this two-year period begins to run at the time of death. St. Francis Hospital, Inc. v. Thompson, 159 Fla.453, 31 So.2d 710 (1947); Fletcher v. Dozier, 314 So.2d 241 (Fla.3d DCA 1975). On the other hand, in medical malpractice wrongful death cases a different statute of limitations applies. Section 95.11(4)(b), Florida Statutes. In such cases it appears that by the specific terms of Section 95.11(4)(b) and regardless of when the malpractice victim dies from the malpractice, the two-year limitations period begins running when the incident giving rise to the action occurs, is discovered or should have been discovered. Ash v. Stella, ___ So.2d ___, 9 F.L.W. 434, 435 (Fla. Oct. 11, 1984).

The Survivors' Right To Sue Is Not Barred By The Decedent's Not Bringing A Timely Action For His Own Damages.

The major thrust of the asbestos producers' argument below was that the survivors' right to bring a wrongful death action depends upon the decedent's ability to sue just prior to death. This argument is based upon the language of Section 768.19,

Florida Statutes, which provides:

When the death of a person is caused by the wrongful act...of any person...and the event would have entitled the person injured to maintain an action and recover damages if death had not ensued, the person...that would have been liable in damages if death had not ensued shall be liable for damages as specified in this act....

This language does not bar Ela Hudson's widow from bringing a wrongful death action for the damages she sustained in her own right. It has long been held in Florida that a right of action for wrongful death is separate, independent and distinct from the right of action of an injured party who later dies. In Ake v. Birnbaum, 156 Fla.735, 25 So. 213 (1945), this Court made it clear that when a party suffers injury which ultimately causes death, two separate rights have been violated. One is the injured party's right to be secure in his person, and the other is the right of his family to the companionship, services or support of the decedent, coupled with the expectancy of a participation in the decedent's estate. The Court emphasized that two separate and distinct rights or interests are thus infringed upon by the tortfeasor, resulting in damage to such separate rights and interests. Id. at 220.

This Court has directly ruled on the question of whether the key language bars a death action when the decedent, at the moment of death, was unable to sue for reasons which were personal and were not inherent in the tort itself. Shiver v. Sessions, 80 So.2d 905, 907, 908 (Fla. 1955). Four children sued the estate of their stepfather who killed their mother and then killed himself. The defendant claimed, as do the asbestos producers

here, that the survivors' right to bring a wrongful death action derives from the rights of the decedent, and since the decedent could not have sued for her own injuries because of the doctrine of interspousal immunity, her survivors could not maintain an action for her wrongful death. This Court rejected the argument. It held that Florida's Wrongful Death Act creates an entirely new right to seek redress for the damages suffered by the survivors themselves. This right is independent of those held by the decedent at death. Id. The Court further held that, while wrongful death recovery does depend upon the existence of the original tort, wrongful death recovery is not defeated by the inability of the decedent, at the time of death, to sue for reasons which are strictly personal and not inherent to the tort itself. Id. at 908.

The Shiver Court, in making the distinction between "right of action" and "cause of action", stated at page 908:

A right of action is a remedial right affording redress for the infringement of a legal right belonging to some definite person, whereas a cause of action is the operative facts which give rise to such right of action. When a legal right is infringed, there accrues, ipso facto, to the injured party a right to pursue the appropriate legal remedy against the wrongdoer. This remedial right is called a right of action. With this distinction in mind, it is clear that the legislature intended that the right of action created by the Wrongful Death Act in favor of the named beneficiaries must be predicated upon operative facts which would have constituted a tort against their decedent under established legal principles - - in other words, they must state a "cause of action" for tort against a tort-feasor, subject to the defenses of contributory negligence and the like which the tort-feasor could have pleaded in a suit against him by the decedent during his or her lifetime, and this court has so held in many causes. But we think it is unreasonable to imply that the legislature intended to bar the "right of action" created by the act on account of a disability to sue which

is personal to a party having an entirely separate and distinct "right of action" and which does not inhere in the tort - - or "cause of action" - - upon which each separate right of action is based. (Emphasis supplied.)

The Shiver Court used the term "cause of action", which is described as "the operative facts which would have constituted a tort", to refer to the event which resulted in the injury and death. The term "right of action" is used to describe the right of certain persons to seek redress for the invasion of their own legal rights by the tortfeasor. Therefore, the decedent's survivors may exercise their "right of action" which was created by the Act as long as the event which resulted in the death is one which is recognized as a tort, subject to defenses inhering in the tort itself, such as contributory negligence. Thus, absent an overpowering countervailing public policy consideration, the "cause of action" is not something which can be extinguished, and the separate "right of action" of the survivors - which is created by statute to achieve the public policy of shifting the loss from the survivors to the wrongdoer - cannot be extinguished by anything but the act or default of the statutory survivors themselves.

In allowing the children's wrongful death action the Shiver Court cited two cases from other jurisdictions involving identical issues and interpreting similar statutes. Welsh v. Davis, 410 Ill. 130, 101 N.E.2d 547, 28 A.L.R.2d 656 (1951), and Rodney v. Staman, 317 Pa.1, 89 A.2d 313, 32 A.L.R.2d 976 (1952). Those wrongful death statutes contain virtually the same crucial language as Florida's Wrongful Death Act, and both courts held that the survivors' rights do not derive from the rights

possessed by the decedent at the time of his death, but instead derive from "the operative facts" of the original tort only.

Plainly, the Shiver Court, by stating that the right to maintain a wrongful death action is subject to the defense of contributory negligence and "the like", recognized that the inability of the decedent to bring a personal injury action at the time of his death for a reason which inheres in the tort itself would bar a subsequent wrongful death action. However, this rule is based upon the doctrine of collateral estoppel or estoppel by judgment, and not upon the theory that there is only one "right of action" which can be extinguished. This makes perfect sense because

The original act of negligence of the tortfeasor must be the gist of all actions maintainable either by the decedent in his lifetime or by the personal representative and the widow after his death.

Epps v. Railway Express Agency, 40 So.2d at 131, 133 (Fla.1949).

The asbestos producers have tried to avoid the controlling effect of this Court's Shiver opinion. They have done so by suggesting to the First District that a statute of limitations defense somehow ex post facto inheres in the original tort. Rather than inhering in the original tort and, thus, coming into existence when the cause of action accrues, the statute of limitations defense never exists at all until the passage of a specified number of statutorily prescribed years.

Moreover, such a defense is purely personal to the decedent, just as the interspousal immunity was held personal to the decedent in Shiver. It is only the decedent, and no one else, who can create a statute of limitations defense to his own right

of action by personally failing to file suit within four years after the accrual of the cause of action. This Court accurately declared in Shiver:

Thus, it is settled law in this jurisdiction that the wife's disability to sue her husband for his tort is personal to her, and does not inhere in the tort itself. The tortious injury to the wife "'does not cease to be an unlawful act, though the law exempts the husband from liability for the damage.'" May v. Palm Beach Chemical Company, Inc., supra (77 So.2d 470)....

The Court then allowed the minor children to pursue their wrongful death claim. Just so, the tortious injury to Mr. Hudson did not cease to be an unlawful act when his own limitations period ran. And, just so, since the limitations defense, unlike contributory negligence, does not inhere in the circumstances surrounding the original tort, his widow's right of action is unaffected.

The foregoing concept is supported by the following comment from 51 Am Jur 2d., Limitation of Actions, Section 22:

The general rule in this respect, supported by the great preponderance of the authorities on the subject, is that a statute of limitations operates on the remedy directly only and does not extinguish the substantive right. Under this rule the courts have regarded true statutes of limitation as doing no more than cut off resort to the courts for enforcement of the substantive claim or right...The United States Supreme Court has adopted as a working hypothesis, as a matter of constitutional law, the view that statutes of limitation go to matters of remedy and not to the destruction of fundamental rights. (Citation omitted.)

This brings us to two cases upon which the asbestos producers have relied, Duval v. Hunt, 34 Fla.85, 15 So. 876 (1894) and Collins v. Hall, 117 Fla.282, 157 So. 646 (1934). The Duval case involved a wrongful death action brought by the

statutory survivors of a railroad employee allegedly killed through the railroad's negligence. In holding that contributory negligence on the part of the decedent would be a complete defense to the wrongful death action, the Court stated, at page 881:

In order to warrant a recovery by anyone for the death of anyone caused by the wrongful act, negligence, carelessness or default of another, the wrongful act, negligence, carelessness or default from which the death ensues must be such as would have entitled the deceased person to maintain an action for damages had death not ensued. If, then, a case is presented wherein the deceased party would have been defeated or barred from recovery for any reason, had he been alive and suing for personal injury only, then the same reason or cause for his bar or defeat will bar and defeat a recovery for his death by anyone suing on that behalf. (Emphasis supplied; original emphasis omitted.)

The asbestos producers broadly construe the second sentence of this statement. However, a reading of the entire statement, in the context in which it was written, shows that the only type of bar to recovery which was contemplated by the court was a bar based upon the operative facts, i.e., where the event, the "wrongful act, negligence, carelessness, or default" was not such as would ever have entitled the deceased party to recover damages for his injuries. It should be noted that the Court, when using the phrase "for any reason" did not - and Shiver proves it - did not mean a situation, such as the Hudson case or the Shiver case, where the basis for the inability of the decedent to maintain an action at the time of his death is personal to him and does not inhere in the tort itself.

Collins v. Hall, supra, involved a wrongful death action which was brought by a widow. During his lifetime her husband

had brought a personal injury action. He lost, and a final judgment was entered against him. The gist of the holding of the Collins case is that the wrongful death action, which alleged the same acts of negligence ("operative facts") as the earlier personal injury action, was barred by the doctrine of collateral estoppel or estoppel by judgment, and in so holding the Court stated, at page 647:

The Court below was without error in upholding the sufficiency of the plea of estoppel by judgment. Under the statute, Sec. 7047, Comp. Gen. Laws, the widow had no cause of action for the death of her husband unless in the language of the statute the cause of such death was "such as would, if death had no ensued, have entitled the party injured thereby to maintain an action...and to recover damages in respect thereof." This issue, going to the existence of a cause of action against a defendant, has been adjudicated adversely to the plaintiff in error's husband in the action brought by him in his lifetime. (Emphasis supplied.)

This holding is completely consistent with Shiver inasmuch as the inability of Mr. Collins to maintain an action for his personal injuries at the time of his death was for a reason which inhered in the tort itself, i.e., a finding that the "operative facts" did not create any cause of action recognized under Florida law.

In the case of Moragne v. State Marine Lines, Inc., 211 So.2d 161 (Fla.1968), this Court once against reaffirmed that the right of the statutory survivors of the decedent does not derive from any rights possessed by the decedent at the time of his death. In the Moragne case the widow of a deceased longshoreman sought to bring a wrongful death action on the maritime principle of unseaworthiness of a vessel in navigable waters. The defendant argued that the Florida Wrongful Death Act did not

provide for a wrongful death action based upon a theory of unseaworthiness; the plaintiff argued that her right to maintain a wrongful death action derived from the rights possessed by her husband at the time of his death, and since her husband, had he lived, could have maintained an action in admiralty based upon the theory of unseaworthiness, she should be allowed to bring a wrongful death action.

In rejecting the idea that Florida's Wrongful Death Act preserves or transfers to the statutory beneficiaries the rights possessed by the injured party at the time of his death, the Court stated, at page 164:

It is equally well-established that the Florida Act does not preserve the right of action which the deceased, had he lived, could have prosecuted, but creates in behalf of the statutory beneficiaries a totally new right of action for the wrongful death, on different principles.

On page 165 of its opinion the Moragne Court recognized that courts of some jurisdictions have made an entirely different interpretation of their wrongful death acts, in that they have interpreted their statutes as preserving the rights the decedent would have had if his injuries had not proved fatal. However, the Moragne Court declared:

This interpretation is contrary to the decisions of this court quoted above; since, as noted, in the Shiver and Parker cases, supra, 80 So.2d 905 and 82 So.2d 131, the defense asserted by the defendant in each of those cases would have been a bar to a suit by the decedent to recover for his injuries, but was disallowed in the suit filed by the statutory beneficiaries to recover for their injuries...(Emphasis by the Court.)

It follows that the statute of limitations defense which would have barred Mr. Hudson's suit for his injuries is not now

available to the asbestos producers to defeat recovery by Mrs. Hudson, the statutory beneficiary, for her injuries.

This Court's 1983 and 1984 Decisions

This Court has made it quite clear that the wrongful death act provides a deceased's survivors a right on their own behalf to recover the separate and distinct damages suffered by them as a result of the wrongful death. This Court has just reiterated that view in Dressler v. Tubbs, 435 So.2d 792 (Fla. 1983), reaffirming the continuing vitality of Shiver v. Sessions. This Court ruled that interspousal immunity (a waivable affirmative defense, as the Hudson court accurately termed the statute of limitations) could not be asserted to defeat a wrongful death claim brought on behalf of a decedent's statutory survivors. Quite in conflict with the First District's later Hudson decision, the Dressler Court quoted Shiver at page 793:

Thus, it is settled law in this jurisdiction that the wife's disability to sue her husband for his tort is personal to her, and does not inhere in the tort itself.... It is also well settled that our Wrongful Death Act creates in the named beneficiaries "an entirely new cause of action, in an entirely new right, for the recovery of damages suffered by them, not the decedent, as a consequence of the wrongful invasion of their legal right by the tortfeasor." This right is "separate, distinct and independent" from that which might have been sued upon by the injured person, had he or she lived.

As we said in our jurisdictional brief:

The First District's decision in Hudson is in direct and express conflict with the rationale of this Court's decisions in Dressler and Shiver.

Recent history suggests that the asbestos producers can be expected to rely heavily upon this Court's decision in a medical malpractice case, Variety Children's Hospital v. Perkins, 445

So.2d 1010 (Fla.1983), which they claim to be controlling. However, Perkins stands only for the limited proposition that a judgment for personal injuries recovered during the lifetime of an injured person bars a subsequent wrongful death action by the personal representative of the deceased where death is the result of the same injuries. It is clear from the majority opinion that the Perkins decision was based solely upon the facts that the "cause of action had already been litigated, proved and satisfied" and that relitigation of the case by the estate to obtain an additional judgment would not further the paramount purpose of the Florida Wrongful Death Act. Id. at 1012. While the majority said that "since there was no right of action existing at the time of death, under the statute no wrongful death cause of action survived the decedent," it is also clear that the statement was made only because the cause of action itself had already been "litigated, proved and satisfied". The Court's concerns in Perkins were double recovery and relitigation of a cause of action which had merged into a previous judgment.

The issue in Hudson, i.e. whether the decedent's widow is barred from bringing an action for his wrongful death solely on the basis that he did not himself bring a timely action during his lifetime, simply was not involved in Perkins. Indeed, Justice Ehrlich, author of the four month old Dressler opinion, and Justice Overton, whose votes were essential to the result in Perkins, took pains to make it clear that the Perkins decision was a "matter of policy and of equity" and should not be read too broadly since the decedent had been "legally made whole" during

his lifetime. The concurring opinion reemphasized that wrongful death actions are independent causes of action in favor of the statutory beneficiaries, and are not derivative actions. It was the opinion of those members of the Court that as a matter of policy and equity, the defendant's payment of damages should have ended its liability.

None of the Perkins opinions, majority, concurring or dissenting, contained any attempt by any member of this Court to distinguish, disavow or overrule the recent opinion in Dressler, nor did the Court distinguish, disavow or overrule Shiver v. Sessions, both of which would require a reversal of the summary judgment in Hudson.

The Perkins result came strictly from a balancing of what the Court viewed as conflicting public policies. The majority opinion stated:

It is thus clear that the paramount purpose of the Florida Wrongful Death Act is to prevent a tortfeasor from evading liability for his misconduct when such misconduct results in death.

And Justices Ehrlich and Overton declared: "The matter is one of policy and of equity." Weighing against this was the fact that in Perkins

...the deceased had already obtained a judgment of \$1,000,000.00 and his parents had recovered \$200,000.00 from the defendant. Hence the defendant has already been held accountable for its tortious conduct. To allow the estate to relitigate the case to obtain an additional judgment would not further the paramount purpose of the Florida Wrongful Death Act.

Accordingly, the balance was struck against permitting the wrongful death action, for to have permitted it would not have accomplished the purpose of the wrongful death act and would have

been overreachingly unfair to the defendants.

No such equities exist in favor of the asbestos producers in this action for the following reasons:

(1) This action will continue to exist. Johns-Manville Sales Corporation is a defendant to the wrongful death action and did not move for summary judgment. Thus, the courts will not be relieved of handling this action, notwithstanding the summary judgment.

(2) Johns-Manville Sales Corporation has the right to bring a contribution action against the respondents notwithstanding the summary judgment against Mrs. Hudson on statute of limitations grounds. Section 768.31, Florida Statutes.

(3) Contrary to the "paramount purpose" of the Florida Wrongful Death Act (Perkins, 445 So.2d at 1012), the summary judgment permits the asbestos producers to evade liability for their alleged misconduct when the misconduct resulted in death, not because the claim is unmeritorious, nor because the claim has been "litigated, proved and satisfied", but because of the mere passage of time between March and July 1981.

Fresh from deciding Dressler v. Tubbs, this Court was very careful to limit its Perkins opinion to an explanation of the paramount remedial purposes of the wrongful death act and how the unique potential in Perkins for a misuse of the act required the rejection of the attempt to hold the defendants liable a second time. It is equally clear, however that where a decedent had a cause of action at his death, but did not have the right to enforce it, his survivors are not barred from bringing a wrongful

death claim. In Shiver v. Sessions and Dressler v. Tubbs, the deceased had no right to sue because of interspousal immunity. Nonetheless, the surviving family members were permitted to sue for wrongful death, since the cause of action against the guilty party remained.

Summation

The distinction between "cause of action" and "right of action" was made long ago by the Court in Shiver v. Sessions. That distinction is clearly applicable here, where Ela Hudson's "cause of action" against the asbestos producers gives rise to his widow's "right of action" to sue them for wrongful death, even though Mr. Hudson's own "right of action" had lapsed prior to his death. Dean Prosser has pointed out that language such as that contained in Section 768.19

...obviously is intended at least to prevent recovery for death where the decedent could never at any time have maintained an action, as, for example, where there was simply no tortious conduct toward him....

Law of Torts (Fourth Edition 1971), page 910. Prosser goes on to observe that

It is not at all clear, however, that such provisions of the death acts were ever intended to prevent a recovery where the deceased once had a cause of action, but it has terminated before his death. The more reasonable interpretation would seem to be that they are directed at the necessity of some original tort on the part of the defendant, under circumstances giving rise to liability in the first instance, rather than to subsequent changes in the situation affecting only the interest of the decedent....

Id. at 911. As to the defense of statute of limitations, Prosser points out that the considerable majority of the courts have held that the statute runs against the death action only from the date

of death, even though at that time the decedent's own action would have been barred while he was living. Id. at 912.

The barring of the widow's wrongful death action merely because of Mr. Hudson's failure to bring a timely personal injury action prior to his death would run completely counter to this Court's interpretation of the wrongful death act in Shiver v. Sessions and Dressler v. Tubbs. A reversal of the First District's decision would, however, be entirely consistent with those cases and be in harmony with Perkins as well. Indeed, the Perkins majority opinion recognized, and the special concurring opinion of Justices Ehrlich and Overton emphasized, the separate and distinct nature of the wrongful death action, and pointed out that such actions are not considered derivative. Although the survivors in Perkins were barred from pursuing a wrongful death claim, that determination was based upon public policy considerations of res judicata and double recovery. Such considerations are absent in Mrs. Hudson's case.

CONCLUSION

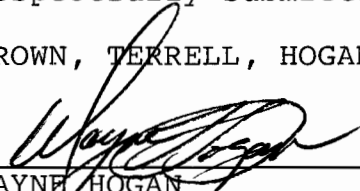
The legislature has given to the widow a right of action in her own name to recover her damages sustained as a result of the asbestos producers' alleged wrongdoing. The reasons for barring that right found in Perkins, Duval, or Collins do not exist here. This case is like Dressler and Shiver. The decision of the First District Court of Appeal conflicts with Dressler and Shiver. It was error to hold that Mrs. Hudson could not proceed on her claim. Accordingly, we respectfully request this Court to hold that Mrs. Hudson has the right to pursue her wrongful death

claim, to quash the decision of the First District and to order the reversal of the summary judgment.

I HEREBY CERTIFY that a copy of the foregoing has been furnished by mail this 15th day of October, 1984 to John C. Taylor, Jr., Esquire 121 W. Forsyth Street, Jacksonville, FL 32202; Norwood S. Wilner, Esquire 624 North Ocean Street, Jacksonville, FL 32202; Clark Jordan-Holmes, Esquire P.O. Box 3324, Tampa, FL 33601 and Gilbert Haddad, Esquire P.O. Box 345118, Coral Gables, FL 33114.

Respectfully submitted,

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