IN THE SUPREME COURT OF FLORIDA

CASE NO.: 65,764

BETTY NEWTON,

Petitioner,

vs.

McCOTTER MOTORS, INC., CORPORATE GROUP SERVICE, INC. and DIVISION OF WORKERS' COMPENSATION OF THE FLORIDA DEPARTMENT OF LABOR AND EMPLOYMENT SECURITY,

Respondents.

BRIEF OF RESPONDENTS RE: JURISDICTION

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STATEMENT OF THE CASE

PRELIMINARY STATEMENT

No appendix will be added by Respondents. Reference will be made to items contained in the Appendix of Petitioner. As this Court's rules provide that it is inappropriate to argue issues in chief, we will attempt to confine the brief to matters involving jurisdiction.

Petitioner seeks discretionary review by this Court of the decision of the First District Court of Appeal (see Petitioner's Appendix) of August 1, 1984, which reversed a Deputy Commissioner's Order holding Section 440.16(1), F.S. to be unconstitutional as applied, while recognizing that a Deputy Commissioner did not have authority to declare a Florida Statute to be unconstitutional. The lower court expressly held this Statute to be constitutional, and refused to certify the question to this Court.

Petitioner now seeks discretionary review, and attempts to invoke the jurisdiction of this Court. Respondent takes the position that there is no basis whatever for discretionary review, the law being entirely clear and constitutional on its face, and there being no suggestion of conflict certiorari review.

The District court found that similar attacks upon parts of the Workers' Compensation Act relating to benefits and time limitations were constitutional (see Petitioner's Appendix, pp. 16-21) and ultimately held:

> "While we hold Section 440.16(1), Florida Statutes, constitutional, and decline to invade the province of the legislature in this regard, we recognize the equities of appellee's arguments and suggest that Section 440.16(1) should be revisited by the Florida legislature to address and debate the public policy underlying the one year and five year limitations in light of the advances made in medical science since the enactment of that statute.
>
> REVERSED.
>
> MILLS AND SHIVERS, JJ., CONCUR."

The District Court expressly declined to invade the province of the Legislature in such matters.

The Statute involved, Section 440.16(1) F.S., enacted in 1935 (at which time the first Florida Compensation Act was adopted) provides:

> "Section 440.16(1): If death results from the accident within 1 year thereafter or follows continuous disability and results from the accident within 5 years thereafter, the employer shall pay:. . ." (Emphasis supplied)

It was stipulated that the employee died some nine years after the date of his accident, following a continuous period of disability.

ARGUMENT

POINT ONE

SHOULD THE SUPREME COURT TAKE JURISDICTION TO REVIEW A DECISION OF A DISTRICT COURT OF APPEAL WHICH EXPRESSLY DECLARES A STATE STATUTE TO BE VALID?

The Responsent submits that there is no valid basis for the Court to take such jurisdiction, or to make further review in the instant case. The District Court completely reviewed the facts and law involved, and re-argument is not warranted or allowed here, under the Rules of this Court, although the Petitioner apparently attempts to do so.

There is no showing whatever that the passage of Section 440.16(1) F.S. in 1935 was predicated upon the question of medical knowledge as to cause of death; rather, together with other sections of the Act pertaining to benefits, it placed reasonable limits (including time limitations, many of which have subsequently been changed by Legislative action.)

Benefits under the Statute in effect at the time of injury apply, and may not be affected by subsequent statutory changes, as retroactive application would be in derogation of a contract (employee-employer-carrier) existing at the time of the injury. Phillips v. City of West Palm Beach, 70 So.2d 345, S.Ct., 1954, following Chamberlain v. Florida Power, 198 So. 486, S.Ct. As this Court said in Chamberlain:

> "One of the benefits to the employee is compensation irrespective of the cause of injury, but under our Act this does not apply to other than dependents. The right to bring a suit at law for damages for death by wrongful act did not exist at common law. It exists only by virtue of Statute."

Hence, contrary to argument of Petitioner, she has not been deprived of any common law right or of access to the courts; the Workers' Compensation Act has been enacted to provide a right which was not even extant at common law, and has provided an exclusive (without fault) remedy, subject to limitations provided in the Statute.

AS TO LEGISLATIVE INTENT AND STATUTORY CONSTRUCTION

Citing one of the earliest cases which had come to the attention of this Court after passage of the Statute in 1935, this Court in Rinker Materials Corporation v. City of North Miami, 286 So.2d 552, (1973) said:

> ". . .In Maryland Casualty Co. v. Sutherland, 125 Fla. 282, 169 So. 679 (1936), dealing with judicial construction of the Workmen's Compensation Act, the Court states the first rule of statutory construction in a like manner:
>
> > 'The legislative history of an act is important to courts **only when there is doubt** as to what is meant by the language employed.' (Emphasis added.)
>
> Where words used in an act, when considered in their ordinary and grammatical sense, clearly express the legislative intent, other rules of construction and interpretation are unnecessary and unwarranted. The intent of the North Miami City Commission in its enactment of the zoning ordinance in issue is to be determined primarily from the language of the ordinance itself and not from conjecture aliunde. A statute or ordinance must be given its plain and obvious meaning. See Marion County Hospital District v. Namer, 225 So.2d 442 (Fla.App.1st 1969), citing Maryland Casualty, **supra**.

This has been a rule uniformly followed by this Court. As stated again in Marion County Hospital v. Namer, 225 So.2d 442 (1st App. (1969):

". . .A cardinal rule of statutory construction, as held by the Supreme Court of Florida, in Maryland Casualty Co. v. Sutherland, 125 Fla. 282, 169 (1936), is as follows:

> 'The intention and meaning of the Legislature must be primarily determined from the language of the statute itself, and not from conjecture aliunde. When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction. The statute must be given its plain and obvious meaning. Douglass, Inc. v. McRainey, 102 Fla. 1141, 137 So. 157, 159. See, also, State [ex rel. Finlayson] v. Amos, 76 Fla. 26, 79 So. 433.'"

Again, this Court in In Re: Ratliff's Estate, 188 So. 128 (1939) said:

> ". . .Perhaps the legislature did not fully contemplate the effect of this language, as applied to cases like this one here before us; we cannot tell just what was in the legislative mind on this subject; but the fact remains that they used this language and that its meaning is obvious and definite and that it construes itself. Much as we respect the opinion and decision of both the County Judge and the Circuit Judge, as well as the arguments of distinguished counsel, we cannot see our way clear to change the language of the statute or give it a strained meaning and construction which do violence to the obvious meaning and effect of the language used. Fine v. Moran, 74 Fla. 417, 77 So. 533; Maryland Casualty Corp. v. Sutherland, 125 Fla. 282, 169 So. 679."

RESPONSE TO PETITIONER'S ARGUMENT

The reference to the Oklahoma case was fully treated and considered on appeal by the First District Court of Appeal, which was not persuaded by it, nor was Respondent. We have a very substantial corpus juris of Workers' Compensation of general appeal law in Florida, and, of course, are not bound by the isolated treatment given by an ulterior court which chose to invade the prerogatives of its legislature. Nor did the rather specious opinion of a medical witness to the effect that there was no substantial medical knowledge in 1935 appeal to that court. The same may be said for the attempted analogy to the Georgia Southern Railway case mentioned by Petitioner, involving as it did an 1887 railroad liability statute concerning contributory negligence.

This Court recently (June 28, 1984) in Sasso v. Ram Property Management, 452 So.2d 932 had occasion to consider and approve a Workers' Compensation statute cutting off wage loss benefits at age 65, applying the rational relationship test and the objectives of such statutes, and holding that the section involved did not violate the claimant's right to equal protection. This Court and the First District Court have come to the same conclusion in a number of other similar cases, all of which were presented to the District Court on appeal there. (See Petitioner's Appendix, pp. 16-20).

Over the years our Legislature almost annually has reconsidered the provisions of the Compensation Act, and has

effected many changes in them. In 1979 the Legislature made a rather complete overhaul of the Act. Over the years, since 1935, including 1979, the Legislature has not found it necessary or advisable to amend Section 440.16(1), involved here. If it should so decide, it will take that action. There is no reasonable basis for this Court to take such action, rather than leaving it to the Legislature if it should find it to be warranted.

CONCLUSION

Petitioner has completely failed to justify the suggestion that this Court should legislate the Workers' Compensation Act of Florida, or to hold invalid Section 440.16(1) thereof.

The decision of the First District Court of Appeal should be affirmed by denial of this Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Richard A. Sicking, Esquire, Attorney for Petitioner, Betty Newton, P. O. Drawer 520337, Miami, FL 33152 and the Division of Workers' Compensation, 1321 Executive Center Drive, East, Tallahassee, FL 32301 by mail this 7th day of September, 1984.

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