

IN THE SUPREME COURT OF FLORIDA

BERTHA PULIDO DE AYALA,
Individually and as Personal
Representative of the ESTATE
OF MAXIMIANO AYALA, Deceased,
and the children of MAXIMIANO
AYALA, Deceased, by their next
friend, BERTHA PULIDO DE AYALA,

Petitioners,

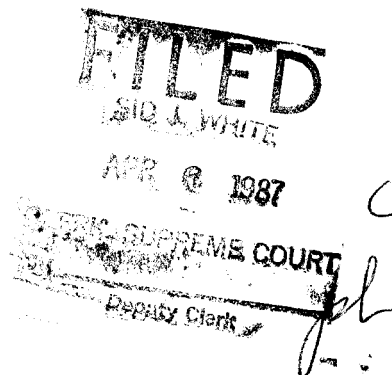
vs.

FLORIDA FARM BUREAU CASUALTY
INSURANCE CO. and STEVE'S
HARVESTING, INC.,

Respondents.

CASE NO: 70,308

APPELLATE NO: 85-1588



BRIEF ON JURISDICTION FOR PETITIONER, BERTHA PULIDO DE
AYALA, ET AL., ON APPEAL FROM THE ORDER OF THE
FOURTH DISTRICT COURT OF APPEAL

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STATEMENT OF THE FACTS AND OF THE CASE

MAXIMIANO AYALA was killed in an accident in the State of Florida while performing duties within the scope of his employment for the Respondent, STEVE'S HARVESTING, INC. He was survived by his Wife, BERTHA PULIDO DE AYALA, and seven children. The decedent, MAXIMIANO AYALA, was a Mexican citizen and had legally lived and worked in the United States for approximately twenty-five years at the time of his death. The decedent's widow is a citizen of Mexico and maintains a residence in Mexico and holds a "green card" issued by the United States Department of Immigration and Naturalization, which document allows her to legally live and work in the United States. (R.1-2)

BERTHA PULIDO DE AYALA, through her attorney, made demand upon the Respondent, FLORIDA FARM BUREAU CASUALTY INSURANCE COMPANY, the workers' compensation insurance carrier for STEVE'S HARVESTING, INC., for the \$100,000.00 death benefit to be paid to her and to the children of the decedent pursuant to Chapter 440, Fla. Stat. (1983), commonly known as the Florida Workers' Compensation Act (R.6-7). FLORIDA FARM BUREAU CASUALTY INSURANCE COMPANY offered Petitioner the statutory limit of \$1,000.00 by check, pursuant to Section 440.16(7) Fla. Stat. (1983). (R.8)

The litigation was commenced on or about December 12, 1984 when the Petitioner filed her Complaint for declaratory relief in the Circuit Court of the Nineteenth Judicial Circuit, in and for St. Lucie County (R.1-8). The basis of the Complaint alleged that Florida Statute Section 440.16(7) was invalid and

unenforceable both on its face and as applied to the Petitioners as violative of the equal protection and due process clauses of the United States Constitution and the Constitution of the State of Florida (R.4). The Respondents, Defendants in the Trial Court below, filed a Motion to Dismiss the Complaint alleging that the Petitioners, Plaintiffs below, failed to exhaust all of their administrative remedies and that the Circuit Court was without jurisdiction to entertain the subject matter contained in the Complaint (R.9-10). Said Motion to Dismiss came on for hearing before the Honorable Phillip G. Nourse, Circuit Judge. Judge Nourse required both parties to file briefs in support of their positions limiting the points to be discussed in the briefs to two matters: 1) whether the Court had the authority to hear the issues raised in the Complaint, and 2) if the Court did have the authority, whether the Statute in question was constitutional. The Court further required Respondents to file an Answer to the Complaint before all the briefs were submitted so that the matter would be at issue and the Court could decide it on the briefs without the benefit of argument.

Petitioners filed an Amended Complaint to correct the style of the original Complaint so as to list the proper parties and the Respondents' answer was served (R.15-26, R.23-26). Both parties submitted the necessary briefs and without oral argument, the Circuit Judge issued his opinion on June 13, 1985. The opinion was in the nature of a Final Judgment and held that the Circuit Court did have jurisdiction to decide the

constitutionality of Section 440.16(7) and further held that Section 440.16(7) was unconstitutional under the Fourteenth Amendment of the United States' Constitution. (R.98-100)

Subsequent to the entry of said opinion, the Petitioner filed a Motion for Clarification as to whether or not the statute in question was also unconstitutional under the Constitution of the State of Florida. Upon said Motion, the Court found that Florida Statute Section 440.16(7) was also unconstitutional under the Florida Constitution and corrected its prior opinion so as to reflect this fact. (R.100)

Respondents, Appellants below, thereafter timely filed a Notice of Appeal, their Initial Brief and eventually a Reply Brief and were supported by an Amicus Curiae Brief submitted on behalf of Associated Industries of Florida, Inc. Petitioner, Appellees below, timely filed their brief and were supported by an Amicus Curiae Brief submitted on behalf of United Farm Workers of America and the AFL-CIO. (R.104)

After hearing oral argument, the Fourth District Court of Appeal issued its opinion affirming the Trial Court ruling that it had jurisdiction to hear the case, but reversing the ruling declaring Section 440.16(7) unconstitutional.

A Petition for Rehearing and a Supplement to the Petition for Rehearing were timely filed. On February 25, 1987, by order of the Court, Appellee's Petition for Rehearing was denied. Petitioners thereafter timely filed their Notice of Appeal.

SUMMARY OF ARGUMENT

Since the filing of the declaratory judgment action, through two sets of briefs, oral argument and two court decisions, the focal point in the litigation has always been the same, whether Florida Statute Section 440.16(7) is constitutional. The issues examined in the Appellate Briefs, and their treatment by the District Court, leave no doubt that, in the face of constitutional attack, Fla. Stat. Section 440.16(7) has been expressly declared valid. In addition, and in the process, constitutional provisions have been expressly construed. In short, the constitutionality of Section 440.16(7) is, and always has been, the determinative issue in the case and essential to its disposition.

The Supreme Court should invoke discretionary jurisdiction because this case involves the deprivation of a person's basic due process, equal protection and court access rights. Florida Statute Section 440.16(7), both on its face and as applied, treats nonresident aliens differently and arbitrarily and without any articulated rational basis. As a result, Mexican aliens are treated differently than Canadian aliens.

ARGUMENT

- I. WHETHER THE SUPREME COURT HAS JURISDICTION AND SHOULD EXERCISE ITS JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL PURSUANT TO ARTICLE V, SECTION 3(b)(3) OF THE FLORIDA CONSTITUTION BECAUSE THAT DECISION EXPRESSLY DECLARES VALID A STATE STATUTE AND EXPRESSLY CONSTRUES A PROVISION OF THE STATE OR FEDERAL CONSTITUTION.

"...Section 440.16(7) does not violate either the due process or equal protection clauses of the Constitutions of the United States and the State of Florida..." was the holding articulated by the Honorable Judge Downy of the Fourth District Court of Appeal after reviewing a line of cases addressing the validity and constitutionality of Section 440.16(7). This statement, reflecting the crux of the Fourth District holding, shows clearly a direct ruling, expressly made, on the validity of a state statute. See e.g. Pace v. State, 368 So.2d 340 (Fla 1979) and Caizza v. Caizza, 291 So.2d 569 (Fla. 1974), where the Court notes that a direct holding, specifically passing on the constitutionality of a statute, is sufficient to invoke appellate jurisdiction. Under Art. V, Section 3(b)(3), Fla. Const., then, the Supreme Court is given jurisdiction to hear the case.

There must be a constitutional or statutory issue as an essential element in the litigation before the Supreme Court can accept a case for appellate review on jurisdictional grounds. P.C. Pissenden Co. v. Board of County Commissioners, 116 So.2d 632, 636 (Fla. 1960). The prima facie test, as articulated in

P.C. Pissenden Co., supra, 636, states that there should exist a genuine issue, fairly and in good faith presented as to the validity of the statute in controversy and its applicability in the case under consideration. In short, the question as to validity of the statute should have been ruled on by the lower Court, and central to the cause litigated between the parties. Richey v. Town of Indian River Shores, 309 So.2d 543 (Fla. 1975).

The record below and the presentation of the issues throughout the case reveals that the validity of Section 440.16(7) Fla. Stat. was always central to the litigation. At the trial level, Judge Nourse narrowed the focus of the issues to two points. One, whether the Trial Court had subject matter jurisdiction to hear the case; and, two, whether Section 440.16(7) was unconstitutional under either the due process or equal protection clauses and for "arbitrarily and unreasonably discriminating against resident aliens injured in a job related accident that results in their death when their dependents are not residents of the United States or Canada."

Judge Nourse, in making his ruling on the validity of the statute, made reference to the Fourteenth Amendment in stating:

Common sense indicates to this Court that in a society whose government should treat everyone equally, there is no reason that resident wives and dependants should be treated more favorable than nonresident wives and dependents, so this Court (in the opinion of this one and only Judge) determines that such a distinction by the government is discriminatory and therefore illegal and unconstitutional.

On appeal to the Fourth District, both parties again submitted Briefs. Again, one of two issues appealed from was whether Florida Statute Section 440.16(7) was constitutional under both the Federal and Florida Constitutions. The District Court's opinion focused on the validity of the statute in question as is clear from the holding:

...while there appears to be no Florida decision as yet directly addressing the constitutionality of Section 440.16(7)...

...Section 440.16(7) does not violate either the due process or equal protection clauses of the Constitutions of the United States and the State of Florida...

In addition to having jurisdiction due to the lower court expressly ruling on the validity of a Florida statute, the Supreme Court has jurisdiction of this case because the Fourth District Court of Appeal expressly construed a provision of the State and Federal Constitution.

In International Hod Carriers' Building and Common Laborers' Union Local 478-AFL-CIO v. Heftler Construction Company, 112 So.2d 848 (Fla. 1959), the Court undertook to explain the requirement of this jurisdiction:

Before this court will take jurisdiction of a case on the ground that a final judgment or decree has construed a controlling provision of the Florida or Federal Constitution, at least four procedural prerequisites must be established by the party affirmatively seeking to invoke our jurisdiction. They are:

1. The constitutional question must have been raised at the first opportunity,
2. The constitutional provision claimed to have been violated must have been designated specifically

either by explicit reference to the article and section or by occasion of the provision,

3. The facts shown in violation must have been stated, and

4. The constitutional question must have been preserved throughout for review.

This requirement contemplates adequate coverage of the constitutional question in the Appellate Briefs. *Id est* 849.

Reviewing each requirement as it applies to our case will reveal compliance sufficient to invoke the Supreme Court's jurisdiction.

First, it is clear that the constitutional question was raised at the first opportunity. As already mentioned, Plaintiff below, in their Complaint for declaratory relief, alleged the unconstitutionality of Section 440.16(7).

Second, the constitutional provisions claimed to have been violated were designated by Petitioner in both the Initial Brief and Appellate Brief by specific reference to the article in question and by quotation.

Third, facts sufficiently reflecting violations of the constitutional provisions have clearly been presented. They show that MAXIMIANO AYALA was a resident alien who had been legally working in the United States for approximately twenty-five years, had paid his full share of taxes and contributed to the community, yet was deprived arbitrarily and unreasonably of his rights under the Federal and Florida Constitutions to workers' compensation benefits available to citizens and other aliens.

The fourth and final element, the preservation of the constitutional question throughout the appeal, as has already been emphasized, has been satisfied.

The Supreme Court should exercise jurisdiction in this case because Florida Statute Section 440.16(7) on its face and as applied violates the basic due process, and equal protection and access to courts rights of the decedent prior to his death and of BERTHA PULIDO DE AYALA and her children unfairly and without any rational basis. Specifically, Florida Statute Section 440.16(7) makes a distinction between Canadians and all other aliens in awarding workers' compensation without legislative history or court decision clearly articulating a reason for doing so. The effect of the statute is to award only a \$1,000.00 death insurance benefit to a Mexican, even if the Mexican is a legal resident, and award a \$100,000.00 death benefit to a Canadian, even if the Canadian is an illegal alien.

The arbitrariness of the statute glaringly comes to light when one considers that MR. AYALA and his family were as much a part of the American way of life as possible without actually being citizens. MR. AYALA had been a legal resident for a period of twenty-five years, working actively throughout that time period, paying taxes, raising a family, etc. Petitioner, his wife, had been a legal resident, holder of a "green card", a taxpayer, an active participant in her community and had one son who was an American citizen.


Regardless of these facts, and their ties to this country, a Mexican worker in the United States with his family in Mexico is not entitled to adequate workers' compensation under Section 440.16(7) even though a Canadian alien's family, with no connections to the United States, is entitled. The reason for the distinction is lacking and the courts below have not identified a rational basis for it. Its effect is to violate the constitutional rights of a family by classifying the rights of Mexican aliens as somehow inferior to the rights of Canadian aliens.

CONCLUSION

Under the facts and circumstances of this particular case, the Supreme Court can and should invoke its discretionary jurisdiction to hear this case. The issue in the case is the constitutionality of Florida Statute Section 440.16(7). In view of the distinction the statute draws between Canadian aliens and Mexican aliens, one completely unsupported by rational reasoning, and its effects on the AYALA family and others like them, a definitive ruling is necessary.

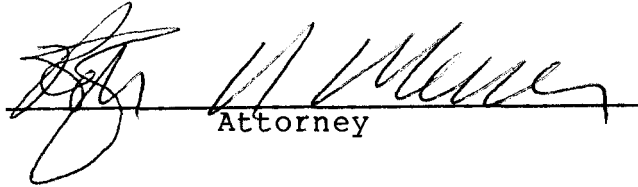
Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail this 3rd day of April, 1987, to THOMAS A. KOVAL, ESQ. and LOUIS B. VOCELLE, JR., ESQ., Attorneys for Respondents, Post office Box 3406, Vero Beach, FL 32964-3406.


Attorney