

IN THE SUPREME COURT OF  
FLORIDA.

CASE NO. 70,308  
DCA-4 CASE NO. 85-1588

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,

v.

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

Respondents.

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**FILED**

SID J. WHITE

APR 23 1987

CLERK, SUPREME COURT

By *[Signature]*  
Deputy Clerk

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RESPONDENTS' JURISDICTIONAL ANSWER BRIEF

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PETITION FOR DISCRETIONARY REVIEW OF A DECISION OF THE  
DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

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QUESTION PRESENTED

WHETHER THE SUPREME COURT SHOULD ACCEPT JURISDICTION OF THIS CAUSE TO REVIEW A DECISION OF THE FOURTH DISTRICT COURT OF APPEAL, WHICH DECLARED SECTION 440.16(7), FLA. STAT. (1983), TO BE VALID UNDER THE EQUAL PROTECTION AND DUE PROCESS CLAUSES OF BOTH THE FLORIDA AND UNITED STATES CONSTITUTIONS.

STATEMENT OF THE FACTS AND OF THE CASE

Respondents accept the chronology of events and certain of the facts set forth by the Petitioners. However, Respondents do not agree with certain specific facts set forth by the Petitioners and disagree with same as follows:

First, in their Statement of Facts, Petitioners allege that the decedent, MAXIMIANO AYALA, was a Mexican citizen and had legally lived and worked in the United States for approximately twenty-five (25) years at the time of his death. Although this may be a true statement, it was not alleged in the Amended Complaint, (A. 1-5) not argued to the trial court below, and is contained nowhere in the record on appeal in this case before the Fourth District Court of Appeal, other than as a bold assertion in the Petitioners' Statement of Facts.

Secondly, Petitioners assert that although the decedent's widow, BERTHA PULIDO DE AYALA, is a Mexican citizen, she nonetheless holds a "green card" issued by the U.S. Department of Immigration, which allows her to live and work in the United States. Again, this fact was not raised in the Petitioners' Amended Complaint below, (A. 1-5) is not contained in the record on appeal, and is irrelevant to the issues in this case.

Thirdly, the Petitioners refer to the fact that they have made demand upon the Respondent, FLORIDA FARM BUREAU CASUALTY INSURANCE COMPANY, for the One Hundred Thousand Dollar (\$100,000.00) death benefit to be paid to the Petitioner and her children, pursuant to Chapter 440, Fla. Stat. (1983). Again, this fact is in error as Section 440.16(1) does not provide for a One Hundred Thousand Dollar (\$100,000.00) death benefit, but

rather provides a formula for compensation to be paid to dependents of a deceased worker, which compensation shall not exceed One Hundred Thousand Dollars (\$100,000.00) (emphasis added).

With the exceptions noted above, Respondents accept the Petitioners' statement of the facts and of the case.

SUMMARY OF ARGUMENT

The Petitioners are all non-resident alien dependents of the decedent, MAXIMIANO AYALA, consisting of his wife and minor children, and are all residents of the country of Mexico. Petitioners, Plaintiffs below, by way of a Complaint for Declaratory Judgment challenged the constitutionality of Section 440.16(7), Fla. Stat. (1983), which limits death benefits paid to non-resident alien dependents of a resident worker to the sum of One Thousand Dollars (\$1,000.00).

The Circuit Court held the statutory provision in question to be unconstitutional under the Equal Protection and Due Process Clause of both the Florida and federal Constitution. (A. 9-11) The Fourth District Court of Appeal reversed and held that Section 440.16(7) was valid, because the right to Worker's Compensation is a statutory privilege and not a fundamental right and further held that said section did not violate either the Florida or U.S. Constitutions as the Petitioners herein were non-resident aliens and, therefore, outside of the jurisdiction of said Constitutions. (A. 12-17)

In accordance with the intent of the Constitutional amendment effective April 1, 1980, limiting the jurisdiction of this Court, this Court should decline to grant discretionary jurisdiction over this cause for the reason that the opinion below does not require further interpretation or construction by this Court, is not in conflict with any other decision of a district court of appeal or of the Supreme Court and because said decision is not appealable as a matter of right, but may only serve as a basis to invoke the discretionary jurisdiction of this Court, which is not necessary in this cause.

ARGUMENT

- I. THIS COURT SHOULD NOT ACCEPT DISCRETIONARY JURISDICTION TO REVIEW THE DECISION OF THE FOURTH DISTRICT COURT OF APPEAL BELOW PURSUANT TO ARTICLE V, SECTION 3(b)(3) OF THE FLORIDA CONSTITUTION, WHICH BELOW HELD THE VALIDITY OF SECTION 440.16(7), FLA. STAT. (1983).

The thrust of the Petitioners' entire Jurisdictional Brief is that this Honorable Court should review the well-reasoned and considered decision of the Fourth District Court of Appeal, based on the proposition that said decision expressly construed a provision of the Florida Constitution and of the United States Constitution. For this proposition, Petitioners cite five cases of the Supreme Court of Florida, all of which were decided prior to the amendment of Art. V, §3, Fla. Const. (1968), in 1980.

Prior to the 1980 constitutional amendment limiting this Court's jurisdiction, Art. V, §3(b)(1), Fla. Const. (1968), provided:

The Supreme Court shall hear appeals from . . . orders of trial courts and decisions of district courts of appeal initially and directly passing on the validity of a state statute or a federal statute for treaty or construing a provision of the state or federal constitution. (Emphasis added)

In other words, had this cause of action accrued prior to the 1980 amendment, Petitioners would be correct in arguing that this Court should accept jurisdiction of this appeal as a matter of right pursuant to Art. V, §3(b)(1), Fla. Const. (1968), prior to its amendment.

This cause of action accrued, however, when the Petitioner's husband, the decedent, MAXIMIANO AYALA, was killed on or about



March 9, 1984. Accordingly, this case is governed by Art. V, §3(b)(3), Fla. Const., which, in 1984, provided that:

The Supreme Court may review any decision of a district court of appeal that expressly declares valid a state statute, or that expressly construes a provision of the state or federal constitution . . . .  
(Emphasis added)

In other words, the cases cited by Petitioners involved a direct right of appeal to this Court prior to 1980; whereas, the instant case is governed by this Court's discretionary jurisdiction and not by those cases cited by Petitioners.

Because there is no appeal as a matter of right to this Court from decisions of a district court of appeal expressly declaring a state statute to be valid, and for the reasons that follow, this Court should refuse to grant jurisdiction in this cause.

The Fourth District Court of Appeal in its opinion below held that this case involves the statutory privilege of conferring benefits upon non-resident alien dependents of a resident worker and does not involve a right to compensation which is protected under either the Florida or federal Constitutions. (A. 12-17) Notwithstanding this fact, Petitioners attempt to cloud the issues by rearguing the merits of the case and by misstating certain facts.

First, Petitioners repeatedly refer to the fact that the decedent, MAXIMIANO AYALA, was "deprived arbitrarily and unreasonably of his rights under the federal and Florida Constitutions to Worker's Compensation benefits available to citizens and other aliens." (Petitioners' Jurisdictional Brief at p. 8.)

This statement by Petitioners completely misses the mark. This entire appellate proceeding has been concerned with the rights of the decedent's non-resident alien dependents, all of whom are currently living in Mexico, to receive Worker's Compensation benefits. There is no question that had the decedent been injured, rather than killed, he would have been entitled to all of the benefits provided under the Act as a resident worker. The fact of the matter is that the widow and children of the decedent were all residents of Mexico, which has absolutely nothing at all to do with Petitioners' contention that the decedent himself was deprived of rights under the federal and Florida Constitution to Worker's Compensation benefits, which statement is an untruth and misstatement of the facts herein.

Next, Petitioner urges this Court to accept jurisdiction, because "Fla. Stat., § 440.16(7), on its face and as applied, violates the basic due process and equal protection and access to court's rights of the decedent prior to his death and of BERTHA PULIDO DE AYALA and her children unfairly and without any rational basis." (Petitioners' Jurisdictional Brief at p. 9.) (Emphasis added)

Again, Petitioners mix and confuse the proverbial apples and oranges. This case, as evidenced by the Amended Complaint, contained in the Appendix attached hereto, has never been about the rights of the decedent prior to his death. (A. 1-5) This action arose out of the death of the decedent on March 9, 1984. Likewise, the District Court of Appeal below specifically addressed Petitioner's claim that she and her children were

treated unfairly without any rational basis. As the Court below noted, the Constitutions of the State of Florida and of the United States do not apply to non-resident aliens because such non-resident aliens are outside of the State of Florida and outside of the United States of America and, therefore, outside of the jurisdiction of the respective constitutions, citing to Pedrazza v. Sid Fleming Contractor, Inc., 94 N.M. 59, 607 P.2d 597 (1980) and to Jalifi v. Industrial Commission of Arizona, 132 Ariz. 233, 644 P.2d 1319 (Ariz. Ct. App. 1982), Appeal Dism'd, 459 U.S. 899 (1982). See also, Johnson v. Eisentrager, 339 U.S. 763 (1950). (Holding that constitutional protections under the United States Constitution only apply to those within the Constitution's territorial jurisdiction.)

Lastly, Petitioners continue to argue the merits of the case to this Court and attempt to persuade this Court into granting jurisdiction of this cause by stating that "the effect of the statute is to award only a One Thousand Dollar (\$1,000.00) death insurance benefit to a Mexican, even if the Mexican is a legal resident, and award a One Hundred Thousand Dollar (\$100,000.00) death benefit to a Canadian, even if the Canadian is an illegal alien." (Petitioners' Jurisdictional Brief at p. 9.)

Petitioners continue to confuse the issue by rearguing the merits of the issue on appeal. The statute in question does not award One Thousand Dollars (\$1,000.00) worth of death insurance to a resident Mexican, nor does it award One Hundred Thousand Dollars (\$100,000.00) in death benefits to non-resident Canadians. What the statute does do is provide that compensation

to non-resident alien dependents shall not exceed One Thousand Dollars (\$1,000.00). As stated above, it is the award of money to non-resident alien dependents that is at issue, not the benefits that would have been available to the decedent, MAXIMIANO AYALA, if injured rather than killed while a United States resident, in which case he would have been entitled to all benefits under Chapter 440. It is only his non-resident alien dependents who are not entitled to compensation of more than One Thousand Dollars (\$1,000.00) because they are all residents of the country of Mexico.

These concerns were correctly and precisely addressed by the Fourth District Court of Appeal in its opinion below when it upheld the constitutionality of Section 440.16(7), based upon the fact that the right to compensation is not a fundamental right under either the Florida or United States Constitutions; the fact that the right to compensation under Chapter 440 is a statutory privilege, and, based upon the fact that the rights contained within both the Florida and the United States Constitutions do not extend to those outside the state or outside the jurisdiction of the United States.

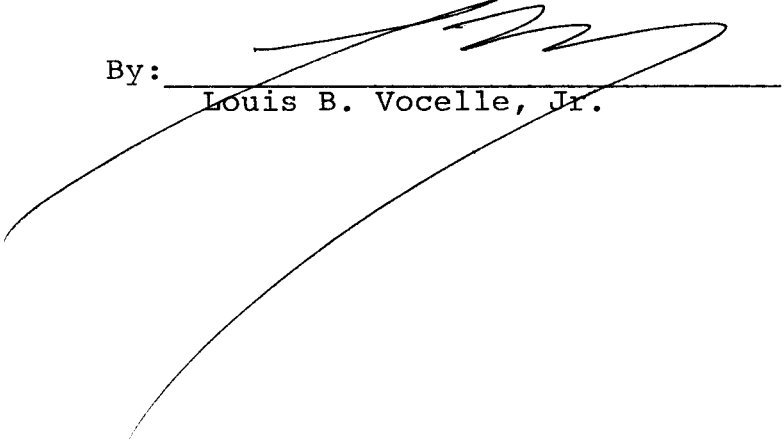
Accordingly, this Court should decline to exercise its discretionary jurisdiction in this cause when there is no discord among the District Courts of Appeal, when the decision of the Fourth District Court of Appeal is consistent with the intent of the statute and when said decision does not require further interpretation or discussion by this Court.

CONCLUSION

Based upon the foregoing facts and authorities as set forth above, the Respondents move this Court for an Order declining to accept discretionary jurisdiction over this cause.

Respectfully submitted,

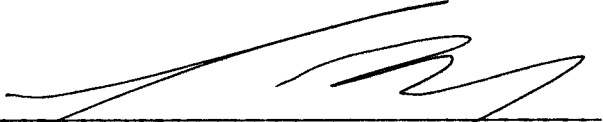
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by mail this 22 day of April, 1987, to RICHARD D. SNEED, ESQUIRE, Suite 104, Sun Bank Building, 700 Virginia Avenue, Ft. Pierce, Florida, 33482, WALTER M. MEGINNISS, ESQUIRE, Assistant Attorney General, The Capitol, Tallahassee, Florida, 32301, and ROGER N. MESSER, ESQUIRE, Sneed & Messer, P.A., Attorneys for Petitioners, 700 Virginia Avenue, Suite 104-Sun Bank Building, Ft. Pierce, Florida, 33482.

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