IN THE SUPREME COURT OF THE STATE OF FLORIDA

CASE NO: 71,670

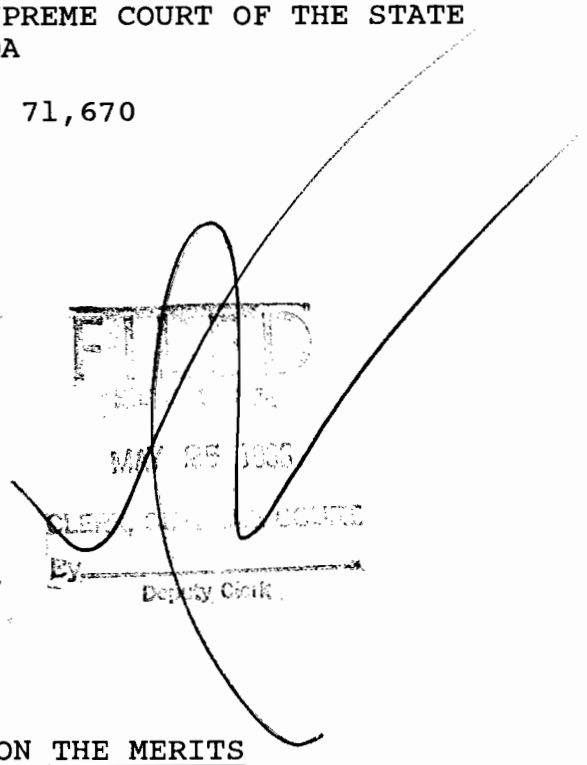
SUSAN ANN KROPFF,

Petitioner,

vs.

STATE OF FLORIDA, DEPARTMENT OF HIGHWAY SAFETY & MOTOR VEHICLES, DIVISION OF HIGHWAY SAFETY,

Defendant.



PETITIONER'S REPLY BRIEF ON THE MERITS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER AUTHORITIES

SUMMARY OF ARGUMENT

The majority of the Respondent's brief does not raise any additional issues or argument other than that discussed in the Petitioner's initial brief, with two minor exceptions. First, the State attempts to argue that if a cause of action against it does not accrue until the statutory administrative claim process is completed, then the statute of limitations would also not begin to run until the claim was denied, thereby allowing the Plaintiff to extend the statute of limitations to 7 1/2 years. The State concludes that since this is clearly not the intended result of the statute that the Petitioner's argument must fail.

The State's argument, however, totally ignores the express wording of Florida Statutes §768.28(6) and (11), which set forth the relevant time limits for filing the required administrative claims as well as the lawsuit itself. This language differs significantly from the provisions of Florida Statutes §768.28(14), which establishes the effective date of the 1981 Amendment. Under the unambiguous wording of the statute, the time period for filing an administrative claim and the lawsuit itself runs from the time of the underlying accident or incident and not from the time that the cause of action accrues. Accordingly, the State's extended statute of limitations scenario is totally impossible under the Plaintiff's construction of the subject statute.

The State's second argument is that it is entitled to prevail because the sovereign immunity statute must be strictly construed in its favor. The doctrine of strict construction, however, has never stood for the proposition that the Court should ignore the plain unambiguous wording of a statute. It has long been the law of the state that where the words in a statute are plain and unambiguous, the rule of strict construction will not be applied.

In the present case, the subject statute is extremely clear and unambiguous in providing that the 1981 Amendments to the statute will apply to causes of action which accrue on or after October 1, 1981. The phrase cause of action has a definite technical legal meaning and as such is presumed that the Legislature meant what it said when it used this phrase. Accordingly, the doctrine of strict construction is totally inapplicable in the present case.

ARGUMENT

WHETHER THE PETITIONER'S CAUSE OF ACTION AGAINST THE FLORIDA HIGHWAY PATROL ACCRUED AFTER THE EFFECTIVE DATE OF THE 1981 AMENDMENT TO FLORIDA STATUTES §768.28, WHICH RAISED THE MONETARY CAP AGAINST STATE AGENCIES TO $100,000

The majority of the Respondent's brief does not raise any additional issues or argument other than that discussed in the Petitioner's initial brief, with two minor exceptions.

Accordingly, rather than rehash those matters which are sufficiently covered in her initial brief, the Petitioner will instead limit her discussion to these two new arguments.

First, the State attempts to argue that if a cause of action against it does not accrue until the statutory administrative claim process is completed then the statute of limitations would also not begin to run until the claim was denied, thereby allowing the Plaintiff to extend the statute of limitations to 7 1/2 years from the date of her injury. The State's argument continues that since this is clearly not the intended result of the statute that the Petitioner's argument must fail.

This argument, however, is nothing more than an attempt to create a strawman in order to divert attention from the real issues involved. The Respondent's argument totally ignores the express wording of Florida Statutes §768.28(6) and (11), which set forth the time for filing the required administrative claims as well as the lawsuit itself. The language of these sub-sections differ significantly from the provisions of Florida Statutes §768.28(14), which establishes the effective date of the 1981 Amendment.

Subsection (6)(a) of Florida Statutes §768.28 provides:

> An action may not be instituted on a claim against the state or one of its agencies or subdivisions unless the claimant presents the claim in writing to the appropriate agency . . . within three years after such claim accrues . . .

Similarly, the pertinent provisions of subsection (11) provide:

> Every claim against the state, one of its agencies or subdivisions for damages for a negligent or wrongful act or omission pursuant to this section shall be

> forever barred unless the civil action is commenced by filing a complaint in the court of appropriate jurisdiction within four years after such claim accrues . . .

Conversely, the effective date provisions of the 1981 Amendment to Florida Statutes §768.28 provide:

> (14) This section as amended by ch. 81-317, Laws of Florida, shall apply only to causes of action which accrue on or after October 1, 1981.

It is immediately apparent when looking at the actual wording of the above statutory provisions that the "extended statute of limitations scenario" suggested by the Respondent simply does not exist. Both subsections (6) and (11) expressly provide that the limitations period for filing the presuit "claim" as well as the actual lawsuit shall start to run "after [the] claim accrues" and not after the "cause of action accrues" as provided in the effective date provision of subsection (14). There is a very big difference between the accrual of "a claim" and the accrual of a "cause of action". These words are not at all synonomous or interchangeable and therefore, a delay in filing an administrative claim cannot be used to extend the statute of limitations.

In Shearn v. Orlando Funeral Home, 88 So. 2d 591 (Fla. 1956), the Florida Supreme Court defined a cause of action by observing:

> . . . it is generally conceded under the modern view that a cause of action is the right which a party has to institute a judicial proceeding. (Emphasis added).

A "claim", on the other hand, has a considerably different meaning under the context of the sovereign immunity statute. In Whitney v. Marion County Hospital District, 416 So. 2d 500, 502 (Fla. 5th DCA 1982), the Court held that a "claim" under the context of subsection (6)(a) of Florida Statutes §768.28 constituted:

> ". . . any manner of submitting a written notice of the claim to the agency involved that sufficiently describes or identifies the occurrence so that the agency may investigate it . . .

Whitney, supra at page 502. Thus, the Court concluded that a written demand for mediation under the Medical Mediation Act of 1975 constituted a sufficient "claim" to satisfy the provisions of Florida Statutes §768.28.

This definition of a "claim" under Florida Statutes §768.28, was subsequently followed by the Second District in Pearlstein in considering the analogous claim provisions of the Medical Malpractice Act of 1985. The Court went on to further note that a "claim" was something different than the "filing of a complaint" so that the premature filing of a complaint could not be considered to constitute the requisite presuit claim. The Court also observed at page 587:

> Instead, we must presume that the Legislature meant what it said when it distinguished the filing of a complaint from the furnishing of a pre-filing notice.

The same is obviously true here in that it must be presumed that the Legislature meant what it said when it distinguished between the filing of a "claim" and the accrual of a "cause of action". See e.g. Windham v. Florida Department of Transportation, 476 So. 2d 735 (Fla. 1st DCA 1985).

Secondly, the Respondent attempts to hide behind the argument of "strict construction", asserting that statutes waiving sovereign immunity must be strictly construed in favor of the State and against the claimant. The doctrine of strict construction, however, has never stood for the proposition that the Court should ignore the plain and unambiguous wording of a statute. In fact, the rule of "strict construction" as well as all other rules of statutory construction have no application whatsoever in the absence of ambiguity in the words of a statute. Thus, where the words in a statute are plain and unambiguous "the rule of strict construction is not needed and will not be applied." State v. City of Pensacola, 126 So. 2d 566, 569 (Fla. 1961). Also see Tropical Coach Line, Inc. v. Carter, 121 So. 2d 779 (Fla. 1960), Erving v. Capital Weekly Post, 97 So. 2d 464 (Fla. 1957), Heredia v. Allstate Insurance Company, 358 So. 2d 1353 (Fla. 1978), State of Florida v. Egan, 287 So. 2d 1 (Fla. 1973).

In this regard, the Courts of this state have repeatedly held that:

> If the language of the statute is clear and unequivocal, then the legislative intent must be derived from the words used without involving

> incidental rules of construction or engaging in speculation as to what the judges might think that the legislature has intended or should have intended.

Carter, supra at page 782. Stated simply:

> Where the words selected by the Legislature are clear and unambiguous, however, judicial interpretation is not appropriate to displace the expressed intent. [citations omitted]. It is neither the function nor perogative of the courts to speculate on construction's more or less reasonable, when the language itself conveys an unequivocal meaning.

Heredia, supra at page 1355.

In this context, it is not even clear what particular phrases or portion of the statute the Respondent is suggesting are ambiguous or which the Court must strictly construe in its favor. Subsection (14) is extremely clear and provides without any ambiguity that the 1981 Amendment to the statute will apply "to causes of action which accrue on or after October 1, 1981." The language could hardly be clearer. Similarly subsection (5) of Florida Statutes §768.28 (1981) provides:

> Neither the state nor its agencies or subdivisions shall be liable to pay a claim or a judgment by anyone person which exceeds the sum of $100,000 . . .

This language also could hardly be clearer.

There is simply no ambiguity whatsoever in any of these statutory provisions. As discussed previously, the phrase "cause of action" has a definite technical legal meaning and as such it is presumed that the Legislature meant what it said when it used this phrase. Cf. Ocasio v. Bureau of Crimes, 408 So. 2d 751 (Fla. 3d DCA 1982), Carson v. Miller, 370 So. 2d 10 (Fla. 1979), Alligood v. Florida Real Estate Commission, 156 So. 2d 705 (Fla.

2d DCA 1963), City of Tampa v. Thatcher Glass Corporation, 445 So. 2d 578, n.2 (Fla. 1984). Moreover, under other well established rules of sttutory construction, the Legislature's choice of the phrase "cause of action" in subsection (14) as opposed to its utilization of the word "claim" in subsections (6) and (11) is strong evidence that it intended a different meaning for these words. Ocasio, supra, Heredia, supra.

The doctrine of strict construction was never intended to constitute a tool for a party to convert the clear and unambiguous language of a statute into ambiguous language like an alchemist turning lead into gold. Nevertheless, this is precisely what the Respondent is attempting to do in this case.

CONCLUSION

Based upon the foregoing authorities and arguments as well as those set forth in the Petitioner's initial brief, it is clear that the Third District Court of Appeals' decision in the present case was erroneous and should be reversed by this Court with instructions that the lower court's judgment be reinstated.

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this 23 day of May, 1988 to WILLIAM PEEPLES, ESQ., 6101 S.W. 76th Street, South Miami, FL 33143 and

RONALD W. BROOKS, ESQ., 863 E. Park Avenue, Tallahassee, Florida 32301.

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