IN THE SUPREME COURT
STATE OF FLORIDA.

CASE NO. 73-475

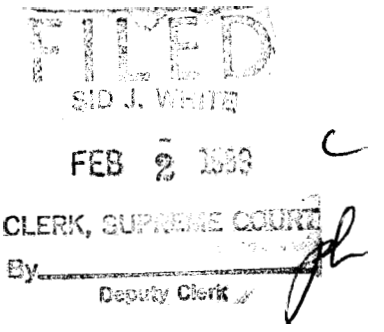
BROWARD C UNTY,

Petitioner/Appellant,

vs.

KEITH FINLAYSON, et al,

Respondent/Appellee.



JURISDICTIONAL BRIEF OF RESPONDENT/APPELLEE, KEITH FINLAYSON, et al

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STATEMENT OF THE CASE AND THE FACTS

The Petitioner's Statement of the Case and the Facts is rejected. As this Court stated in Reaves v. State, 485 So.2d 829, 330, n.3 (Fla. 1986), the only facts which can be considered in jurisdictional briefs are those contained within the four corners of the decisions allegedly in conflict. The inclusion of other matters is both "pointless and misleading." Id.

The facts from the decision under review, Broward County v. Finlayson, 533 So.2d 817 (Fla. 4th DCA 1988), (A-1), are these:

BROWARD COUNTY employed emergency technicians (paramedics), but wrongfully withheld the overtime pay to which they were entitled. A suit for breach of contract was filed by the technicians, judgment was entered in their favor for the overtime pay plus prejudgment interest, and the judgment was affirmed in its entirety by the Fourth District in a decision which specially discussed only the prejudgment interest award. The Court concluded that it was proper and fundamentally fair for a sovereign to be liable for prejudgment interest when it is liable for the underlying contractual debt because of a wrongful act.

The portion of BROWARD COUNTY's Statement of the Case and the Facts relating to the procedural history is also incomplete and, therefore, misleading. Although the Fourth District did originally state that their conclusion "may well be in conflict with Sigman v. City of Miami, 500 So.2d 693 (Fla. 3d DCA 1987)," the Court expressly did not "acknowledge" a jurisdictional conflict. Instead, the COUNTY asked the Fourth District to certify the claimed conflict, and after briefing, the district court denied the request

snd did not certify its decision as being in conflict with Sigman. (A-2, A-3).

JURISDICTIONAL ISSUE ON DISCRETIONARY REVIEW

WHETHER THE DECISION IN FINLAYSON II THAT THE COUNTY SHOULD PAY PREJUDGMENT INTEREST ON ITS CONTRACTUAL OBLIGATIONS IS IN EXPRESS AND DIRECT CONFLICT WITH THE DECISION OF SIGMAN, WHICH HOLDS THAT A CITY DOES NOT OWE PREJUDGMENT INTEREST UNDER A STATUTE WHICH BY ITS TERMS APPLIES ONLY TO AGENCIES AND SUBDIVISIONS OF THE STATE, BUT NOT TO MUNICIPALITIES.

SUMMARY OF ARGUMENT

The decision of the Fourth District in the court below and the decision of the Third District in Sigman v. City of Miami, supra, are not in conflict at all, let alone the express and direct conflict necessary to allow this Court to invoke its discretionary jurisdiction.

Finlayson decided that a county can be sued on its contractual obligations and owes interest on them if it has wrongfully breached its agreements. The Sigman court, on the other hand, faced a suit for prejudgment interest which was based solely on a statute that gave veterans rights against agencies and subdivisions of the state. Since the defendant in Sigman was a city, the Third District properly concluded that there was no statutory basis under § 295.14 for an award of interest against a Florida municipality.

While Finlayson does yield a result in which a plaintiff recovered prejudgment interest and Sigman yielded a result where a plaintiff did not recover prejudgment interest, the total difference in the bases of the claims eliminates the possibility that the two decisions could be read to be in express and direct conflict.

ARGUMENT

THE DECISION IN FINLAYSON II THAT THE COUNTY SHOULD PAY PREJUDGMENT INTEREST ON ITS CONTRACTU L OBLIGATIONS IS NOT IN EXPRESS AND DIRECT CONFLICT WITH THE DECISION OF SIGMAN, WHICH HOLDS THAT A CITY DOES NOT OWE PREJUDGMENT INTEREST UNDER A STATUTE WHICH BY ITS TERMS APPLIES ONLY TO AGENCIES AND SUBDIVISIONS OF THE STATE, BUT NOT TO MUNICIPALITIES.

As with all discretionary jurisdiction cases, this Court must .ook to the precedential effect of the allegedly conflicting lecisions to determine whether the law in Florida now contains at .east one incorrect decision and at least one incorrect decision on ;ome rule or point of law. Since Article V, Section 3(b)(3) only ;rants this Court jurisdiction if the decisions "expressly and lirectly" conflict "on the same question of law," this Court must letermine whether the Finlayson decision in the court below decides .he same question of law as that faced in Sigman v. City of Miami, 00 So.2d 693 (Fla. 3d DCA 1987), and if so, whether there are any 'actorspresent which explain a different result.

For the reasons set forth in the following brief, it is 'espectfully suggested to this Court that the respective decisions o not "expressly and directly" conflict and, further, are not in act "on the same question of law." Discretionary review should be enied.

A. Broward County v. Finlayson, 533 So.2d 817 (Fla. 4th DCA 988).

A common law class of employees brought an action against ROWARD COUNTY, seeking back pay for a breach of contract concerning

overtime obligations.[1] In reviewing a judgment awarding back pay, prejudgment interest on that pay, and attorney's fees, the Fourth District Court of Appeals affirmed the trial court in all respects and felt that only the prejudgment interest issue merited any discussion.

The court's decision was that a county owed prejudgment interest in a contract action for back pay brought by a class of employees "who were wrongly denied overtime." 533 So.2d at 818.

The reason for the Fourth District's decision was that:

(1) a sovereign cannot raise sovereign immunity and consents to be sued on contract claims (citing Pan-Am Tobacco Corp. v. Department of Corrections, 471 So.2d 4 (Fla. 1985));

(2) where the state can properly be sued on its contractual debts, prejudgment interest is an additional obligation (citing Dade County v. American Re-Insurance Co., 467 So.2d 414 (Fla. 3d DCA 1985) and Broward County v. Sattler, 400 So.2d 1031 (Fla. 4th DCA 1981));

(3) this Court's decisions in Treadway v. Terrell, 117 Fla. 838, 158 So. 512 (1935) and Flack v. Graham, 461 So.2d 82 (Fla. 1984) are consistent with these rules, particularly where the State's subdivision was a participant in the transaction in question (breach of contract) and not an innocent victim; and

(4) it would not be inequitable to require the County to pay prejudgment interest on this sort of wrongful breach of a direct contractual relationship.

B. Sigman v. City of Miami, 500 So.2d 693 (Fla. 3d DCA 1987).

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[1] See generally Fla. Stat. §§ 125.01, 125.15, and 687.01.

When the Third District's opinion in Sigman v. City of Miami, supra, is compared, it can be seen that neither the decision nor the reason for it are in jurisdictional conflict with the Fourth District's decision below. To assist the Court in this discretionary review, a copy of the decision in Sigman has been included in the Respondent's Appendix. (A-4).

At the outset, Sigman was an action against a Florida municipality, not a subdivision of the State. (This distinction would not have affected the Fourth District's decision in Finlayson, but it was a crucial factor in the Third District's decision in Sigman).

More importantly, Sigman was not a breach of contract action, but was a statutory complaint in which the plaintiff based his claim solely on the provisions of Florida Statute § 295.14. After initially filing a premature action,[2] Sigman pursued his administrative remedies and prevailed on his claim that he had been denied certain veterans' benefits. The City of Miami was ordered to give him a job promotion and back pay. Sigman then filed a mandamus action seeking a further promotion, and also filed a claim for interest and attorney's fees under Florida Statute § 295.14, not under any contract or common law theory of recovery.[3] Section 295.14(2) by its terms applies its penalty provisions only against

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[1] City of Miami v. Sigman, 448 So.2d 533 (Fla. 3d DCA 1984).

[2] The narrow scope of the plaintiff's claim in Sigman is clearly spelled out in the trial court's order reproduced in the Third District's decision. The trial court noted that "plaintiff relies upon 295.14 for all damages sought in Count II" [the compensatory damage count] and later added that "Section 295.14 of the Florida Statutes is the authority for the Plaintiff to sue the City of Miami for back pay." 500 So.2d at 694.

any agency, employee, or officer of the State or a political ubdivision thereof found in violation of any provision of this ct."[4]

The Third District reversed the award of interest (and ttorney's fees), but not on a contract theory. Instead, the court efused to extend a veteran's statutorily-granted rights to overnmental entities not covered by the statute. The court stated:

> The penalties provided by Section 295.14, Florida Statutes (1985) apply to an agency, officer or employee of this state or one of its political subdivisions. Since the City of Miami is neither an agency, officer, or employee, section 295.14 does not apply.

Based on the above, the following chart points out the important differences between Sigman and the decision below in Finlayson. (Note that the differences discussed here do not necessarily make the Sigman decision correct or incorrect; they simply make it a decision on a different point of law for the purposes of considering discretionary review based on conflict of decisions).

	Finlayson II	Sigman
Plaintiff:	County paramedic	City policeman
Defendant:	County (Broward)	Municipality (Miami)

.....

[4]The full text of subsection (2) of I 295.14 provides: "When reparation is sought through civil action in a court of competent jurisdiction any agency, employee, or officer of the state or a political subdivision thereof found in violation of any provision of this act shall, in addition to any other edict issued by the court, be required to pay the costs of suit and reasonable attorney's fees incurred in such action and shall be required to pay as damages such amount as the Court may award, any law to the contrary notwithstanding." (Emphasis added).

Basis of Claim:	Contract	§ 295.14 (Veterans' Benefits Statute Providing Penalties)
Decision:	County owes pre-judgment interest on contract claim	City owes no interest on statutory § 295.14 claim because statute does not apply to cities.

Knowing that the specific issue decided in Sigman is part of the discretionary review story, the balance of the story is what was neither presented to nor decided by the Third District.

a) The Sigman court did not decide whether Mr. Sigman could have had prejudgment interest rights under Section 295.14 against a county or other subdivision of the state.

b) The Sigman court did not decide whether Mr. Sigman could have had prejudgment interest rights against a municipality under a contract theory of recovery.

c) Finally, and most importantly from a jurisdictional standpoint, the Sigman court did not decide whether Mr. Sigman could have had prejudgment interest rights against a county on a contract theory of recovery.

This last question, and the only one which could have yielded an opinion on a sufficiently similar point of law to create jurisdictional conflict here, has in fact been directly presented to the Third District in a recent case and conclusively answered consistently with Finlayson. In Dade County v. American Reinsurance Co., 467 So.2d 414 (Fla. 3d DCA 1985), the Third District, when confronted with a contract claim (as opposed to a purely statutory veterans' benefit claim) against a county (as opposed to

of the state in question. See Treadway v. Terrell, 117 Fla. 838, 158 So. 512 (1935); Brooks v. School Board of Brevard County, 419 So.2d 659 (Fla. 5th DCA 1982); Broward County v. Sattler, 400 So.2d 1031 (Fla. 4th DCA 1981); Dade County v. American Re-Insurance Co., supra. Accordingly, when the Finlayson and Sigman cases are properly compared as to their holdings, the following points are clear with respect to the discretionary review question before this Court:

a) The Third District will not award prejudgment interest against cities in claims brought exclusively under Florida Statute

§ 295.14 (penalties payable to veterans entitled to benefits). Sigman, supra.

b) The Third District will award prejudgment interest on contract claims against counties. Dade County v. American Re-Insurance Co., supra.

c) The Fourth District also will award prejudgment interest on contract claims against counties. Finlayson, supra; Broward County v. Sattler, supra.

For the foregoing reasons, it is respectfu ly suggested to this Court that the decision of the Fourth District in Broward County v. Finlayson, 533 So.2d 817 (Fla. 4th DCA 1988) is not in jurisdictional conflict with the decision of the Third District in Sigman v. City of Miami, 500 So.2d 693 (Fla. 3d DCA 1987), nor is it in jurisdictional conflict with any other decision in the State of Florida on the same question of law.

CONCLUSION

For the reasons set forth in the foregoing brief, it is respectfully suggested that this Court deny discretionary review in this cause, there being no jurisdictional conflict.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been furnished, by mail, this 30th day of January, **1989**, to SUSAN **F.** DELEGAL, County Attorney, Governmental Center, Suite **423**, 115 South Andrews Avenue, Fort Lauderdale, FL **33301** and to JAMES C. CROSLAND, of Muller, Mintz, Kornreich, Caldwell, Casey, Crosland & Bramnick, P.A., Suite **3600**, Southeast Financial Center, **200** South Biscayne Boulevard, Miami, FL **33131-2338.**

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