SUPREME COURT OF FLORIDA

HILLSBOROUGH COMMUNITY MENTAL HEALTH CENTER, ETC.,	**	
Petitioner,	**	CASE NO.: 79,266
vs.	**	District Court of Appeal 2nd District - No. 90-2842
MARJORIE J. HARR, ETC., ET AL.,	**	
Respondent.	**	
SAYYED HUSSAIN, M.D.	**	
Petitioner,	**	CASE NO.: 79,267
vs.	**	District Court of Appeal 2nd District - No. 90-2842
MARJORIE J. HARR, ETC., ET AL.	**	
Respondent.	**	

BRIEF OF PETITIONER,

HILLSBOROUGH COMMUNITY MENTAL HEALTH CENTER, INC.

(Petititon for Discretionary Review - Certified Question From District Court

Brief on the Merits)

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STATEMENT OF CASE AND FACTS

This is a Petition for Discretionary Review of a decision of the Second District Court of Appeal upon a question certified to be of great public importance. The Petitioner, HILLSBOROUGH COMMUNITY MENTAL HEALTH CENTER, INC., was a Defendant in the trial court, an Appellee in the district court, and will be referred to in this brief as the "Mental Health Center". The Petitioner in the companion case, which has been consolidated with this case, SAYYED HUSSAIN, M.D., was also a Defendant in the trial court, an Appellee in the district court and will be referred to in this brief as "Dr. Hussain". The Respondent, MARJORIE J. HARR, was the Plaintiff in the trial court, the Appellant in the district court, and will be referred to in this brief as the "Plaintiff". All references are to the record on appeal and will be denoted by the prefix "R".

STATEMENT OF THE CASE

On October 20, 1988, Plaintiff served a notice of intent to commence litigation initiating a malpractice claim against the Mental Health Center and Dr. Hussain. (R 14) Thereafter suit was filed on February 15, 1989. (R 1) The Mental Health Center and Dr. Hussain filed answers including an affirmative defense that the claim was barred by the applicable statute of limitations. (R 20, 25) The Mental Health Center and Dr. Hussain then filed motions for summary judgment. (R 64, 209) The motions were heard by the trial court which ruled that the claim was barred by the applicable statute of limitations. Summary judgment was granted in favor of the Mental Health Center and Dr. Hussain. (R 294)

Plaintiff appealed to the Second District Court of Appeal. (R 299) The second district court reversed the judgment of the trial court but certified the issue to be a question of great public importance. Thereafter, the Mental Health Center and Dr. Hussain filed Petitions for Discretionary Review in this court. Those petitions have been consolidated.

STATEMENT OF FACTS

On October 2, 1986, Lt. David Gainer of the Florida Game and Fresh Water Commission found the Plaintiff's decedent, Michael Harr, on the median strip of Interstate 275 near Fletcher Avenue hooking up a flexible hose to the exhaust pipe of his pick-up truck. (R 248-249) Deputy M.W. Burton of the Hillsborough County Sheriff's Department was dispatched to the scene. (R 248) Deputy Burton found suicide notes in the truck that Michael had written to his girlfriend and to his mother. (R 249) Deputy Burton also found Michael Harr to be depressed. (R 215) As a result, Deputy Burton took Mr. Harr into custody pursuant to the provisions of the Baker Act and took him to the Mental Health Center at approximately 8:00 P.M. on October 2, 1986. (R 215)

Mr. Harr was interviewed at the Mental Health Center by an intake counselor. He said that he had been thinking about suicide that afternoon but adamantly denied being suicidal at the time he was seen at the Mental Health Center. He denied trying to hook up a hose to his exhaust pipe. He said that he intended to get a job or to go back to Atlanta, where he had spent time on his trip to Tampa from South Dakota. (R 227-228) The counsellor from the

Mental Health Center spoke to Dr. Hussain, a psychiatrist, and it was decided that the patient could be discharged and he was discharged. (R 229) He later drove his truck through the fence at the impound lot where it had been taken. (R 230) Two days later, Michael's decomposing body was found in Pasco County in the same pick-up truck. (R 13) A flexible hose had been hooked to the exhaust pipe and led into the cab. (R 256) The cause of death was carbon monoxide poisoning. (R 14)

On October 6, 1986 the Plaintiff, Marjorie Harr, Michael Harr's mother, received a telephone call from the local police chief in Aberdeen, South Dakota, where she lived, telling her that he had received information from the authorities in Tampa that Michael had died on October 2, 1986. (R 87, 110) In the early morning hours of October 7, 1986, Mrs. Harr spoke to a Tampa police officer on the telephone. (R 111) She was told that her son had committed suicide by hooking up a flexible hose from the exhaust pipe of his truck into the vehicle. (R 256) She was also told that her son had been found earlier in the evening of October 2, 1986 by another officer who had found Michael with a flex hose already hooked up to the exhaust pipe of his vehicle and in a state of depression to the point that he was "Baker Acted". (R 112) She was also told that as a result of the episode where he was found in a state of depression with the flexible hose hooked up to his vehicle, he was taken to "the crisis center". She was told that later that day after leaving the crisis center he had killed himself by attaching a

flexible hose to the exhaust of his vehicle and running it into the cab of the vehicle, thereby asphyxiating himself. (R 112)

On October 7, 1986 the police officer who was speaking to the Plaintiff on the telephone disclosed that he had Michael Harr's personal effects and that he would send those affects to her shortly. (R 257) Those personal effects contained a suicide note which had been found in Michael's pick-up truck when his body was discovered. (R 258) Contained in the suicide note was a reference to the Hillsborough Community Mental Health Center. (R 258) When the Plaintiff received Michael Harr's personal effects, including the suicide note, she learned the name of the Hillsborough Community Mental Health Center. (R 258) Also during the conversation on October 7, 1986 Mrs. Harr was advised that her son had been "Baker Acted". Mr. Harr did not understand the phrase "Baker Act" and asked the officer several times "what is the word you are saying?" (R 112)

A few days after March 23, 1987, Mrs. Harr received copies of the suicide letters which had been found on the afternoon of October 2, 1986 as well as the evaluation report from the Hillsborough Community Mental Health Center. Included in that evaluation report was the name of Dr. Hussain. (R 259-260)

On September 30, 1987, the Plaintiff received a copy of a report entitled "Report on Deaths of Individuals Seen at the Crisis Stabilization Unit". According to Mrs. Harr's affidavit it was not until she had received and reviewed this report that she felt that she should make further investigation into her son's suicide. (R

260) According to her affidavit, at no time prior to receiving this report did she associate Michael's suicide as even possibly being a "medical injury" as opposed to a self-inflicted suicide which she had at all times believed it to be. (R 260-261) Also according to her affidavit at no time prior to September 30, 1987 did she associate her son's suicide with his treatment or lack of treatment by the Mental Health Center and Dr. Hussain. (R 261)

SUMMARY OF ARGUMENT

The record in the trial court showed that the Plaintiff had notice of the physical injury (decedent's death) more than two years prior to filing her claim. The trial court accepted the stated holding of this court in the case law and ruled that the limitation period began to run from the date Plaintiff had notice of the death. The district court refused to accept the clear statement in the Supreme Court cases that the statute of limitations begins to run when the Plaintiff has notice of the physical injury which is the consequence of the negligent act. The court held that additionally the Plaintiff must have notice of (1) the existence of a health care relationship, (2) the identity of the health care provider and (3) proximate causation.

I. THE STATUTE OF LIMITATIONS COMMENCES WHEN THE PLAINTIFF HAS NOTICE OF AN INJURY IN FACT

The statements of this court's holdings on the subject are clear and unambiguous. This court has held unequivocally that when a plaintiff has notice of the physical injury which is the consequence of the negligent act, the statute of limitations begins to run.

The district court held that notice of injury alone is insufficient information to place a plaintiff on notice of a possible invasion of his legal rights and determined that additional information must be required in order to commence the statute of limitations. The holdings of the Supreme Court, however, make it clear

that the statute of limitations begins to run when a plaintiff has notice of any of the elements of his cause of action. Once the plaintiff has notice of one of the elements of his cause of action, he is placed on notice of a possible invasion of his legal rights; has constructive notice of all information readily available to him; and the statute of limitations begins to run. The additional information required by the district court before the statute of limitations begins to run is contrary to the stated holding of the Supreme Court precedents and is contrary to the reasoning and facts in those cases.

This court has determined when the statute of limitations begins to run by a construction of the applicable statute that the statute begins to run when the plaintiff has notice of any one of the elements of his cause of action. This construction was first announced in 1976, has been reaffirmed several times since that time, and is correct.

II. PLAINTIFF HAD SUFFICIENT NOTICE AS A MATTER OF LAW TO PLACE HER ON NOTICE OF A POSSIBLE INVASION OF HER LEGAL RIGHTS

The record shows that more than two years prior to filing her claim the Plaintiff had actual or constructive notice of all of the information which she needed to file suit with the possible exception of knowledge that the actions of the Defendants were negligent. Plaintiff had actual notice of those matters which were told to her; she also had constructive notice of the information readily available to her.

Plaintiff had actual notice that her son had died, that he had committed suicide by hooking a flexible hose to his exhaust pipe, that he had been found earlier the same day in a state of depression attempting to commit suicide with a flexible hose so that he was Baker Acted, that as a result of this episode he was taken to a crisis center, that he left the crisis center, and that after leaving the crisis center he committed suicide by attaching a flexible hose to the exhaust of his vehicle. She had constructive notice of the name of the crisis center and that the "crisis center" was a mental health facility. The Plaintiff, therefore, had notice of all of the factors suggested by the district court with the possible exception of notice of negligence which is clearly not required.

ARGUMENT

The trial court entered final summary in favor of the Mental Health Center on the grounds that the suit was barred by the applicable statute of limitations. The trial court accepted this court's statement in Nardone v. Reynolds, 333 So.2d 25 (Fla. 1976) and in Barron v. Shapiro, 565 So.2d 1319 (Fla. 1990) that the statute of limitations in a malpractice suit commences either when the plaintiff has notice of the negligent act giving rise to the cause of action or when the plaintiff has notice of the physical injury which is the consequence of the negligent act. The record before the trial court showed without contradiction that the plaintiff had notice of the physical injury, that is, the decedent's death, which was the consequence of the alleged negligent act no later than October 7, 1986. The record also showed without contradiction that the notice of intent to litigate was not filed until October 20, 1988, more than two years after plaintiff had notice of the decedent's death. Accepting the stated holding of Nardone and Barron, the trial court ruled that the limitations period began to run from the date that the plaintiff had notice of the decedent's death and expired before she filed her claim.

The Second District Court of Appeal reversed. The district court held that the clear statement of Nardone and Barron that when the plaintiff has notice of the physical injury which is the consequence of the negligent act the statute of limitations begins to run, cannot be accepted at face value. Where the plaintiff does not have notice that the defendant committed a negligent act, the second

district holds that the statute of limitations does not begin to run until the plaintiff has notice of the following four factors: (1) the existence of a relationship between the plaintiff and a health care provider that is sufficient to create a legal duty under a theory of medical negligence; (2) the identity of the health care provider who owes the duty; (3) proximate causation; and (4) injury. (District Court opinion at p. 6) According to the second district a plaintiff does not have notice of the physical injury which is the consequence of the negligent act within the meaning of Nardone and Barron even though the plaintiff has actual knowledge of that injury unless the plaintiff also has notice of these three additional factors.

The district court was uncertain as to whether it was correct in refusing the accept the stated holding in Nardone v. Reynolds, supra as reiterated in Barron v. Shapiro, supra and University of Miami v. Bogorff, 583 So.2d 1000 (Fla. 1991). The court, therefore, certified the issue as being a question of great public importance. In essence, the certified question asks this court to determine whether or not Nardone and Barron are to be taken at face value, in which event the statute of limitations would commence when the plaintiff has notice of an injury in fact or whether the statute of limitations commences when the plaintiff has notice of an injury in fact plus notice "that the injury in fact resulted from an incident involving a health care provider" which the court uses as a short-hand expression of the three additional factors enumerated above.

The position of the Mental Health Center is that the summary judgment entered by the trial court should be reinstated for one of two reasons. The first is that Nardone and Barron should be taken at face value so that the statute of limitations commenced when the plaintiff knew of the death of her decedent. The second reason is that even if additional notice is needed, the plaintiff had sufficient notice as a matter of law to place her on notice of a possible invasion of her legal rights.

I. THE STATUTE OF LIMITATIONS COMMENCES WHEN THE PLAINTIFF HAS NOTICE OF AN INJURY IN FACT.

The statements of this court's holdings on the subject are clear and unambiguous. In Nardone v. Reynolds, 333 So.2d 25 (Fla. 1976), the court stated:

> . . .[T]he statute of limitations in a malpractice suit commences either when the plaintiff has notice of the negligent act giving rise to the cause of action or when the plaintiff has notice of the physical injury which is the consequence of the negligent act.. . .[Accordingly] the statute of limitations began to run when the injury was known.

333 So.2d at 32.

In Barron v. Shapiro, 565 So.2d 1319 (Fla. 1990), the court stated:

> In resolving [Moore v. Morris, 475 So.2d 666 (Fla. 1985)] this court reaffirmed the principal of Nardone that the statute begins to run when the plaintiff knew or should have known that either injury or negligence had occurred.

556 So.2d at 1321 . . .

> We believe that the reasoning of Nardone continues to be applicable to the current statute. Thus, the limitation period commences when the plaintiff should have known either of the injury or the negligent act.

565 So.2d at 1322. Any doubt of the court's intention should be dispelled by the following statement from Barron:

> The district court of appeal misinterpreted Moore when it said that knowledge of physical injury alone, without knowledge that it resulted from a negligent act, does not trigger the statute of limitations.

565 So.2d at 1321. Restating the foregoing statement positively it could be said that a proper interpretation of Moore is that knowledge of physical injury alone, without knowledge that it resulted from a negligent act, does trigger the statute of limitations.

Likewise, in University of Miami v. Bogorff, 583 So.2d 1000 (Fla. 1991), the court stated:

> In Barron we expressly rejected the argument that knowledge of a physical injury, without knowledge that it resulted from a negligent act, failed to trigger the statute of limitation. Rather we reaffirmed the principles set forth in Nardone and applied in Moore v. Morris, 475 So.2d 666 (Fla. 1985) and held that the limitation period commences when the plaintiff should have known of either (1) the injury or (2) the negligent act.

The resistance of the district court to accepting the plain holding of these cases undoubtedly results from the tension inherent in a system which bars claims based upon incomplete knowledge. As Judge Lehan points out in his concurring opinion in Goodlet v. Steckler, 586 So.2d 74 (Fla. 2nd DCA 1991) there is a spectrum of the amount of knowledge which could be the trigger for the statute of limitations. At one end of the spectrum, the limitations period could begin when all of the elements of the cause of action have occurred even if the plaintiff has no knowledge of any of those elements. At the other end of the spectrum, the commencement of the

limitations period could be postponed until the plaintiff has knowledge of all of the elements of the cause of action plus all of the practical information which the plaintiff would need to file suit. Defendants, of course, would prefer to see the commencement at the low information end of the spectrum while plaintiffs would like to see the commencement at the high information end of the spectrum. Plaintiffs would like to see the commencement at the high information end of the spectrum because the quantity of the information required and the subjectivity of the information required at the higher end of the spectrum would make it virtually impossible for the defendant to show the complete absence of a genuine issue of fact thereby precluding summary judgment in virtually all cases. As courts are naturally resistent to the adjudication of claims on some basis other than the merits, their natural tendency is to place the statute of limitations trigger on the higher information end of the spectrum.

A cause of action for negligence can accrue without any notice of its accrual by the plaintiff. A cause of action for negligence accrues when all of the elements of the cause of action have occurred. The elements of a cause of action for negligence are the breach of an existent duty, proximate causation and damages. Lake Parker Mall, Inc. v. Carson, 327 So.2d 121 (Fla 2nd DCA 1976). It seems apparent from the holding in Nardone, Barron and Bogorff that a plaintiff has notice of the "incident" and therefore the statute of limitations is triggered when the plaintiff has notice of any of these elements of the cause of action for negligence. Under the

clear holding of the cases the statute of limitations commences if the plaintiff has notice that the defendant has breached an existent duty. Likewise, if the plaintiff has notice of the injury which resulted from that breach of duty, the statute of limitations commences. Although the cases do not state it, it seems obvious that if the plaintiff has notice that there is a causal connection between the negligent act and the injury, the statute of limitations will begin. By definition, if the plaintiff has notice of proximate causation he will have notice of the injury and therefore the statute of limitations will commence. The cause of action accrues and the plaintiff has a right to sue immediately upon the occurrence of all of the elements of the cause of action even if he knows of none of them. However, the statute of limitations does not commence until, but it does commence when, he has knowledge of any of these elements of the cause of action. Once the plaintiff has notice of any of the elements of his cause of action he is, as a matter of law, placed on notice of the possible invasion of his legal rights and must use reasonable diligence to discover the remaining elements of the cause of action. All information contained in sources readily available to him, such as medical records, public records and reference information is imputed to the plaintiff at that point. Nardone v. Reynolds, supra; Jackson v. Georgopolous, 552 So.2d 215 (Fla. 2nd DCA 1989). Thus, if the plaintiff has notice of negligent treatment, he is placed on notice of the possible invasion of his legal rights and must discover whether or not there is any injury or proximate causation within two years of such notice. Likewise,

if the plaintiff has notice of a physical injury, he is placed on notice of a possible invasion of his legal rights and has two years to discover the remaining elements of his cause of action, namely, negligence and causation.

The genesis of the district court's addition to the information required to commence the running of the statute of limitations to that stated in the holding of Nardone and Barron appears to be Jackson v. Georgopolous, supra. In the concurring opinion in that case, Judge Lehan attempted to harmonize the various holdings of the cases dealing with the statute of limitations which seem to place the commencement trigger all along the information spectrum. Judge Lehan's harmonization method was to define the word "injury" as used in Nardone v. Reynolds to mean not only knowledge or notice of the existence of the particular physical injury but also notice of the incident involving the defendant resulting in that injury. 552 So.2d at 218. On the basis of this definition of injury, Judge Lehan harmonizes several cases which appear to have been overruled by Barron v. Shapiro, supra, including Shapiro v. Barron, 538 So.2d 1319 (Fla. 4th DCA 1989), which, of course, was reversed by Barron v. Shapiro. These cases including Shapiro v. Barron were "harmonized" by the reasoning that while the plaintiffs in those cases had notice of the injury there was a question of fact as to whether or not they had notice of the incident involving the defendant resulting in that injury. Nevertheless, this court determined that Shapiro v. Barron was not in harmony with Nardone v. Reynolds and reversed.

This expanded definition of "injury" from Nardone and Barron was discussed and debated by the second district in Goodlet v. Seckler, supra, Rogers v. Ruiz, 16 FLW (D) 3076 (Fla. 2d DCA Dec. 20, 1991) and of course in the opinion under review here. In the concurring opinion in Goodlet, Judge Lehan attempts to explain how the expanded definition of "injury" is permissible under Barron and Bogorff. In Rogers v. Ruiz, authored by Judge Lehan with a special concurrence by Judge Parker and a dissenting opinion on this point by Judge Ryder, Judge Lehan reiterates the expanded "injury" thesis of Jackson and Goodlet but spends most of the opinion beating down an effort by Judge Ryder to place the trigger even further along the spectrum. In none of the cases, however, does the court articulate any basis for the expanded "injury" definition other than to state that notice of physical injury alone is insufficient to place the plaintiff on notice of a possible invasion of plaintiff's legal rights. In other words, the second district feels that the test should be further along the information spectrum than it is stated to be in Nardone, Barron and Bogorff.

An analysis of the elements which make up this expanded definition of "injury" shows that it is not compatible with the holding and reasoning of Nardone, Barron and Bogorff. According to the opinion under review, the plaintiff must have not only notice of the injury but also notice of the existence of a health care relationship between the plaintiff and the defendant, notice of the identity of the defendant, and notice of proximate causation. In Nardone v. Reynolds the plaintiff did not know the identity of at least one of

the defendants until after suit was filed. Yet, the suit was barred as to him. It appears from Rogers v. Ruiz that what the court means by notice of proximate causation is that the plaintiff must know not simply of the injury but also must know that the injury resulted from treatment by the defendant physician.

> In both this case and in Goodlet the plaintiff had notice not simply of the injury (for present purposes, the death) but also of the injury having resulted from treatment by defendant physician.

16 FLW (D) at 3078.

This requirement flies squarely in the face of University of Miami v. Bogorff and Nardone v. Reynolds. It is quite clear from the facts in Bogorff that the parents of the injured child had no actual knowledge that the injury resulted from treatment by the defendant physician. Indeed it appears that the parents reasonably believed that the child's condition was the result of the natural spread of his leukemia rather than the treatment by the doctor. Nevertheless, the court in Bogorff held that notice of the injury was sufficient to place the parents on notice of the possible invasion of their legal rights commencing the statute of limitations. In Nardone the parents did not know the offending procedure had been performed or that it had caused the injury. Yet, the claim was barred. It is quite clear from Bogorff and Nardone that the absence of knowledge of causation just as absence of knowledge of negligence does not prevent the commencement of the statute of limitations where the plaintiff has knowledge of the injury.

The bottom line is that this court has determined when the statute of limitations begins to run by construing the applicable

statute. The court has construed that statute as requiring the statute of limitations to begin when the plaintiff has notice of any one of the elements of his cause of action. Presumably, that construction of the statute enunciated in Nardone v. Reynolds in 1976 and reaffirmed recently in Barron and Bogorff is correct. If that construction is correct then it is not appropriate to change the statute simply because some might feel that it would be better if the commencement point were farther along the information spectrum. Unless the court is now to determine that its construction of the statute in Nardone, Barron and Bogorff was wrong, the trigger point should be left where it is unless it is changed by the legislature.

II. PLAINTIFF HAD SUFFICIENT NOTICE AS A MATTER OF LAW TO PLACE HER ON NOTICE OF A POSSIBLE INVASION OF HER LEGAL RIGHTS

Even if this court is to reject the clear statement of its holding in Nardone, Barron, and Bogorff, it is clear that the plaintiff in this case had sufficient information to place her on notice of the possible invasion of her legal rights. Indeed, the record shows that as of October 7, 1986 the Plaintiff had actual or constructive notice of all of the information which she needed to file suit with the possible exception of knowledge that the actions of the Defendants were negligent.

The Plaintiff, of course, had actual notice of those matters which were told to her by the authorities on October 6, and October 7, 1986. In addition, the Plaintiff also had constructive notice of the information available to her from readily available sources.

As the court said in Nardone v. Reynolds, 333 So.2d 25 at page 35, quoting from Morgan v. Koch, 419 F.2d 993, 997 (7th Cir 1969):

> The statute [of limitations] is tolled only for those who remained ignorant through no fault of their own.. . .The party seeking protection [from the effect of the statute] must have exercised reasonable care and diligence in seeking to learn the facts.. . .

333 So.2d at 35. See also Jackson v. Georgopolous, 552 So.2d 215 (Fla. 2nd DCA 1989). Thus, in Nardone and in Jackson v. Georgopolous and many other similar cases, the courts have held that information contained in medical records, public documents, reference sources and other information easily obtained by due diligence is imputed to the plaintiff as constructive notice.

In this case, the Plaintiff had actual notice, because she was told by the police authorities, that her son had died on October 2, 1986. She had actual knowledge that the decedent had committed suicide by hooking up a flexible hose from the exhaust pipe on his truck into the vehicle. She knew that her son had been found earlier in the evening of October 2, 1986 by another officer who had found Michael with a flex hose already hooked up to the exhaust pipe of his vehicle and in a state of depression to the point that he was Baker Acted. She knew that as a result of the episode where he was found in a state of depression with the flexible hose hooked up to his vehicle he was taken to the crisis center. She had actual knowledge that he left the crisis center and after leaving the crisis center committed suicide by asphyxiation from a flexible hose running from the exhaust of his vehicle into the cab of the vehicle.

As pointed out above, she also had constructive notice of relevant information available to her from the sources of her actual knowledge. As Mrs. Harr points out in her affidavit, the materials received by the police at the suicide scene contained the reference to the Hillsborough Community Mental Health Center from which she eventually learned the name of the crisis center. Undoubtedly if she had asked the police officer for the name of the crisis center, he would have given it to her and therefore she had constructive notice of that information. Mrs. Harr stated in her deposition that she did not understand the phrase "Baker Acted" and asked the officer to repeat it. Undoubtedly if she had asked the officer the meaning of the phrase, he would have explained that it was a procedure whereby a person who is a danger to himself or others is involuntarily taken to a mental health facility. Mrs. Harr therefore had constructive notice, at least, that the decedent had been taken to a mental health facility. Even in the absence of the ability of the police officer to explain the significance of the phrase "Baker Act" to her, she undoubtedly had constructive notice of her son's treatment at a mental health facility. Someone who knows that a person is taken to a "crisis center" because he was found in the process of committing suicide and in a state of depression must certainly understand that person was taken to some sort of mental health facility. No reasonable person would understand that a person involuntarily taken under those circumstances to a "crisis center" was being taken to a hotel, a restaurant or a park.

Putting together all of the information of which the Plaintiff had either actual or constructive knowledge, it is apparent that Mrs. Harr had notice of all of the relevant "Goodlet" factual considerations. She had actual knowledge of the injury (factor 7). She had actual knowledge of her own identity and of the identity of the decedent (factor 1). She had constructive knowledge of the existence of a relationship between the Plaintiff and a health care provider (factor 2) by virtue of the application of common sense or the simple expedient of having asked the officer the meaning of the term which she did not understand. She had constructive knowledge of the identity of the health care provider (factor 3) from the readily available public records, namely the report of her son's suicide, or from the simple expedient of having asked the officer while he was on the telephone. She also had notice of the proximate cause of the death (factor 6) in that she knew that the decedent had been released from the crisis center and that he had committed suicide while at large after having been so released. The only factors which she could possibly claim not to have known are the standard of care owing (factor 4) and the facts establishing a breach of the standard of care (factor 5). Unless Nardone, Barron, and Bogorff are to be completely overruled and discarded, it is absolutely certain that the statute of limitations begins to run even though the plaintiff has no notice of these factors. At the risk of flogging a dead horse:

> In Barron we expressly rejected the argument that knowledge of a personal injury without knowledge that it resulted from a negligent act, failed to trigger the statute of limitation. Rather, we...

> held that the limitation period commences when the plaintiff should have known of either (1) the injury or (2) the negligent act.

University of Miami v. Bogorff, 583 So.2d 1000 (Fla. 1991) at 1002.

Therefore, on October 7, 1986 the Plaintiff had notice of all of the relevant "Goodlet" factors.

CONCLUSION

The ruling of the trial court was in accordance with this court's construction of the applicable statute of limitations that the statute begins to run when the claimant has notice of the negligent act giving rise to the cause of action or when the plaintiff has notice of the physical injury which is the consequence of the negligent act. That construction of the statute has been reaffirmed by this court on many occasions and is correct. Therefore, the certified question posed by the district court ought to be answered by this court by reaffirming that the statute of limitations in a malpractice suit commences when the plaintiff has notice of the injury in fact.

However, even if this court is to reject its previous construction of the statute and hold that the plaintiff needs notice of more than notice of the physical injury which is the consequence of the negligent act, the summary judgment granted by the trial court should nevertheless be reinstated in this case. The Plaintiff had actual or constructive notice of all of the additional factors suggested by the district court with the possible exception of notice of a negligent act. Because the Plaintiff had notice of sufficient information to place her on notice of a possible invasion of her legal rights as a matter of law the judgment of the trial court should be reinstated.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was sent by regular U.S. Mail this 4th day of March, 1992 to RICHARD M. MITZEL, ESQUIRE, Post Office Box 3329, Tampa, Florida, 33601-3329; LEE S. DAMSKER, ESQUIRE, 606 East Madison Street, Post Office Box 172009, Tampa, Florida, 33672-0009; CLIFFORD L. SOMERS, ESQUIRE, 3333 Henderson Blvd., Suite 110, Tampa, Florida, 33609 and JOEL EATON, ESQUIRE, 800 City National Bank, 25 W. Flagler Street, Miami, Florida, 33130.

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