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CLERK, SUPREME COURT

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IN THE FLORIDA SUPREME COURT
Case No. 82,412

CALVIN WILEY,

Defendant/
Petitioner,

vs.

CARRIE LINN YOUNG ROOF,

Plaintiff/
Respondent

PETITIONER, CALVIN WILEY'S AMENDED BRIEF ON JURISDICTION

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SUMMARY OF ARGUMENT

The court below was called upon to pass upon the validity of Chapter 92-102, Laws of Florida, which sought to revive claims of abuse that had previously been barred by the then applicable statute of limitation; and to rule upon the effect of the trial court's dismissal of respondent's claim of above, against petitioner prior to the enactment of the statute in question.

The ruling of the district court validating the statute in opposition to petitioner's claimed vested right in the prior limitation of action, and in opposition to petitioner's claimed violation of due process provides a basis to invoke the discretionary jurisdiction of this court, the decision of the district court:

1. Expressly and directly conflicts with prior decisions of this court on the same point of law.
2. Expressly declares the amendment of Florida Statute 95.11 (1989) valid.
3. Expressly construes a provision of the state and federal constitution.

STATEMENT OF THE CASE AND THE FACTS

In 1991, respondent filed a complaint in the Circuit Court of Pinellas County, claiming that petitioner had sexually abused her some nineteen (19) years earlier when she was fifteen (15) years of age. (App.-2)

Petitioner asserted that the statute of limitation had run on respondent's claim and that the same was time-barred pursuant to Florida Statute 95.11 (3) (o), 1989. The trial court agreed and dismissed respondent's complaint.

Respondent appealed the trial court's order of dismissal to the District Court of Appeal, Second District. While the appeal was pending, the legislature amended Florida Statute 95.11 (1989),¹

Section (7) of the amended statute has no application to respondent's claim; nineteen (19) years have elapsed between the alleged abuse and her assertion of same, nor does the claim involve an assertion of "delayed discovery". Rather, respondent has relied upon Section 2, of Chapter 92-102, Laws of Florida as having revived her's, and all such similar claims from the beginning of time, provided that the same are asserted within four (4) years of the effective date of the statute's amendment.

In response to the legislature's attempt to revive the otherwise time-barred claim, petitioner asserted below: 1) that he has a vested right to the defense of the statute of limitation

1 (7) For intentional torts based on abuse. --An action founded on alleged abuse, as defined in s. 39.01 or s. 415.102, or incest, as defined in s. 826.04, may be commenced at any time within seven (7) years after the age of majority, or within four (4) years after the injured person leaves the dependency of the abuser, or within four (4) years from the time of discovery by the injured party of both the injury and the casual relationship between the injury and the abuse, whichever occurs later.

Section 2. Notwithstanding any other provision of law, a plaintiff whose abuse or incest claim is barred under section 1 of this act, has four (4) years from the effective date of this act, April 8, 1992, to commence an action for damages. (Ch.92-102, Laws of Fla. 1992).

which is entitled to due process protection from retroactive legislation; 2) that the statute is constitutionally defective, because the same is not rationally related to the achievement of a legitimate government purpose; 3) that the trial court's order dismissing the claim before the legislature's amendment of the statute, created a vested substantive right in the petitioner to assert the defense of the statute of limitation, thus the law in effect at the time of the trial court's ruling must apply to petitioner, rather than the law at the time of appeal.

The district court of appeal rejected each of petitioner's arguments and instead declared the statute valid.

POINT I.

THE DISTRICT COURT'S APPROVAL OF THE LEGISLATURE'S REVIVAL OF TIME-BARRED CLAIMS EXPRESSLY AND DIRECTLY CONFLICTS WITH THE PRIOR DECISIONS OF THIS COURT.

The ruling of the district court hinged on the narrow issue of whether due process of law would permit the legislature to revive respondent's otherwise time-barred claim, and grant her four (4) more years from April 8, 1992, to advance same.

The pronouncement by the district court of appeal validating Section 2, Chapter 92-102, Laws of Florida, expressly and directly conflicts with the well-established law of the State of Florida.

This court has consistently reasoned that the legislature may not expand a statute of limitation after the cause of action is barred by the prior statutory limitation period.

In Corbett v. General Engineering & Machinery Co., 37 So.2d 161 (Fla. 1948) this Court stated at page 162:

"A person has no vested right in the running of a statute of limitation unless it has completely run and barred his action. Before the action is barred by the statute of limitation, the legislature may amend the statute enlarging the period of time within which an action may be brought. This is not retroactive legislation and does not impair a vested right." (emphasis added)

This court has continued to adhere to the vested rights doctrine of Corbett, in its subsequent rulings. In Wall v. Johnson, 78 So.2d 371 (Fla. 1955); a mother brought a paternity action, the putative father asserted that the claim was time-barred notwithstanding legislation that sought to revive the claim. The trial court rejected the putative father's defense applying the new statute, this court reversed reasoning that although retroactive legislation is permissible, the same could not be extended to revive a cause of action that was barred under the prior limitation.

Since Corbett, and Wall, this court has consistently announced a rule of law directly in conflict with the ruling below. In Walter Denson & Son v. Nelson, 88 So.2d 120 (Fla. 1956), this court held that parties have no vested interest in a particular limitation until the period prescribed by the statute of limitation has run. Id. at 122 (emphasis added) stating:

"The legislature has the power to increase prescribed period of limitation and to make it applicable to existing causes of action provided the change in the law is effective before the cause of action is extinguished by the force of pre-existing statute."

Likewise the decision below conflicts with the recent pronouncements of this court on the legislature's power to revive time-barred claims, in Celotex Corporation v. Meehan, 523 So.2d 141 (Fla. 1988) this court said:

"We note that the law of Florida would only allow an expansion of a statute of limitation period when the change is made before the cause of action is barred by the prior statutory limitation period." See also Firestone Tire & Rubber Co. v. Acosta, 612 So.2d 1361 (1992).

POINT II.

THE DECISION OF THE DISTRICT COURT OF APPEAL MISAPPLIES PRECEDENT CREATING CONFLICT JURISDICTION.

The district court reasoned that the legislature's enactment of Chapter 92-102, Laws of Florida, did not operate to deprive petitioner of a vested substantive right to a defense notwithstanding that the trial court had dismissed the claim against petitioner prior to the enactment of the law in question.

In reaching that conclusion, the district court relied upon Chase Securities Corp., v. Donaldson, 325 U.S. 304, 65 S.Ct. 1137, 89 L.Ed.2d 1628 (1945), and Campbell v. Holt, 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1885). That reliance was misplaced. Campbell arose from a writ of error out of the Supreme Court of Texas, and did not address the issue of vested rights nor the revival of barred claims as it relates to state law; rather Campbell involved an amendment to the Texas Constitution to allow access to the courts following the civil war in recognition that access had been denied during the war.

Chase, involved the passage of a statute to extend claims arising out of the stock market crash of 1929, unlike the instant statute which reopens claims from the beginning of mankind; further, unlike the present case, the Chase ruling did not deprive the defendant of a prior ruling in its favor. Moreover, the United States Supreme Court in Chase expressly stated that its decision was not mandatory upon the state courts interpreting their own constitution. Id. at 325 U.S. at 312-13, 65 S. Ct. at 1141-42, 89 L.Ed 2d at 1635.

Here, the highest court of the State of Florida has consistently and repeatedly pronounced the position that a defendant has a vested substantive right to a particular limitation of action, that may not be taken away by legislative enactment, once the claim is barred by the prior statutory limitation period, See Corbett, Denson & Son, Wall, Celotex, and Firestone Tire & Rubber Co., Supra. In the present case, not only had the time run, but the trial court had entered its order dismissing the claim based upon the then applicable limitation of action. In ignoring the fact that an order of dismissal had been entered before the enactment of the statute in question, the district court misapplied prior decisional law of this court.

In Allie v. Ionata, 503 So.2d 1237 (Fla. 1987), this court concluded that a dismissal for failure to comply with the statute of limitation constituted an adjudication on the merits. Likewise, Rule 1.420, Florida Rules of Civil Procedure, provides that an order of dismissal operates as an adjudication on the merits.

POINT III.

THE DECISION OF THE DISTRICT COURT OF APPEAL EXPRESSLY PASSED UPON THE VALIDITY OF CHAPTER 92-102, LAWS OF FLORIDA.

In addition to the fact that the opinion of the district court conflicts with those of this court, and that the same misapplies controlling law, this court may exercise its discretion to review the district court's ruling in light of its passage upon the validity of a Florida statute.

A variety of attempts to enlarge statutes of limitation applicable to abuse cases have recently occurred in other jurisdictions throughout the country. The highest court of those states have been called upon to determine the validity of the legislative effort under the law of each jurisdiction so affected.

For example, the Virginia Supreme Court in Starnes v. Cayouette, 419 S.E.2d 669 (Va. 1992), concluded that a defendant has a right to set up the bar of the statute of limitation as a defense after the statute had run and that the same is a vested right that can not be taken away by a legislative attempt to revive the claim.

POINT IV.

THE DECISION OF THE COURT OF APPEAL EXPRESSLY CONSTRUES A PROVISION OF THE STATE AND FEDERAL CONSTITUTION.

Article I, Section 9, Florida Constitution (1968), and Amendment IV, United States Constitution, prohibit the

depravation of life, liberty, or property, without due process of law. This Court has consistently reasoned that a defendant has a vested right to a particular limitation once the period prescribed by the statute has run. See, Denson & Son, Corbett, Wall, Supra.

Petitioner urged below that Chapter 92-102, Laws of Florida, violated his right to due process, by its attempt to revive the time-barred claim; reciting both the prior rulings of this court and that of Virginia, in Starnes, Supra. The District Court of Appeal rejected the due process argument specifically concluding that:

"...a state legislature, consistent with the Fourteenth Amendment, may repeal or extend a statute of limitation even after a right of action is barred, restore to the plaintiff his remedy, and divest the defendant of his statutory bar."

This construction of due process is in opposition to that announced by this court in the cases cited in Point I of this brief.

CONCLUSION

This Court has jurisdiction to review the decision of the District Court of Appeal on at least three basises: construction of the Constitution, conflict, and passage upon the validity of a statute.

The rule of law announced by the court below conflicts with the well-established rule of law pronounced by this court, and creates confusion in the law of Florida. As a result, this court should grant review to clarify and correct this conflict, Nielsen v. City of Sarasota, 117 So.2d 731 (Fla. 1960).

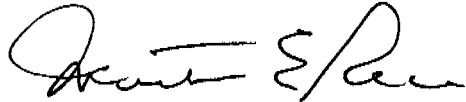
The trial court's dismissal of the asserted claim prior to the enactment and effective date of Chapter 92-102, Laws of Florida, created a vested judicial determination in favor of petitioner; the district court has misapprehended the law of Florida in applying the prior decisional law of this court, and the same serves as a basis for this court's review of the district court's ruling, McBurnette v. Playground Equipment Corp., 137 So.2d 563 (Fla. 1962).

The validity of the statute in question is one of great importance. Jurisdiction should be exercised to assure uniformity in the law of the State of Florida, and to avoid the long and painful determination of the validity of the statute in question through the various district courts.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to ANTHONY S. BATTAGLIA, ESQUIRE and BRIAN P. BATTAGLIA, ESQUIRE, Post Office Box 41100, St. Petersburg, FL 33743 and BARRY A. COHEN, ESQUIRE and CHRISTOPHER P. JAYSON, ESQUIRE, Post Office Box 73077, Tampa, FL 33672, and RICHARD J. DAFONTE, ESQUIRE, 1000 Belcher Road South, Suite 2, Largo, FL 34641, this 13th day of October, 1993.

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