IN THE SUPREME COURT OF FLORIDA

DAVID MASON,

Petitioner,

vs. Case No.: 82,968

ARTURO SALINAS, JR.

Respondent
_____/

PETITIONER'S INITIAL BRIEF ON THE MERITS

On Review from the District Court of Appeal
Second District, State of Florida
In Case No. 92-04118

Michael R.N. McDonnell
Fla. Bar No. 124032
McDonnell Law Offices
Suite 304 at The Commons
720 Goodlette Road North
Naples, Florida 33940
(813) 434-7711
Attorneys for Petitioner

TABLE OF CONTENTS

TABLE OF CITATIONS

INTRODUCTION

The Defendant/Petitioner, DAVID MASON will be referred to herein as Mason. The Plaintiff/Respondent, ARTURO SALINAS will be referred to as Salinas.

References to the Appendix shall be by the letter "A" together with the appropriate page number.

STATEMENT OF CASE AND FACTS

Salinas filed suit against Mason for damages, in August of 1992 alleging that he was sexually abused by Mason while a student at Gulfview Middle School between 1974 and 1976. (A 1). At the time of the alleged abuse, Florida Statutes did not provide a specific limitations period for this cause of action. The applicable statute of limitation was found in § 95.11(3)(o) & (p), Florida Statutes, which provided a four year statute of limitations for battery, intentional torts or for "...any action not specifically provided for in these statutes."

Mason moved to dismiss the Complaint on the ground that the four year statute of limitations precluded Salinas' cause of action. The trial court granted Mason's motion with prejudice on October 26, 1992. (A 2).

Salinas appealed to the Second District Court of Appeal alleging that Chapter 92-102, Laws of 1992, Twelfth Legislature, which amended §95.11, revived his cause of action, twelve years after its preclusion by the existing statute of limitations. In support of this position Salinas argued that the language in section 2 of the amended statute manifested an intent by the legislature to revive all sexual abuse actions which were barred by the previous statute.

The Second District Court of Appeal filed its decision on October 15, 1993, reversing the order of the Circuit Court. (A 3). The appellate court ruled that the 1992 amendment to §95.11 "revived for a four-year period previously time-barred causes of action based on intentional abuse or incest."

Thereafter Mason filed his Notice of Invoking the Discretionary Jurisdiction of the Supreme Court of Florida on the grounds that the Second District's decision expresslyy and directly conflicts with another district court of appeal and the supreme court on the same question of law and expressly validates an esisting state statute. (A 4). Mason and Salinas filed their jurisdictional briefs, and on May 25, 1994, this Court accepted jurisdiction to review the Second District's decision. (A 5).

SUMMARY OF ARGUMENT

The appellate court erred in its determination that the 1992 amendment to §95.11 "revived for a four year period previously time-barred causes of action based on intentional abuse or incest." Clearly this reasoning is contrary to the plain meaning and intent of the legislature in drafting this amendment. Moreover the Supreme Court of Florida has previously ruled although the legislature may permissibly increase a period of limitations, and make it applicable to an existing cause of action, it may not permissibly revive a cause of action that was extinguished by a pre-existing statute of limitations. Salinas' cause of action was extinguished some 12 years before the new statute, and therefore may not now be revived.

I. ARGUMENT

FLORIDA LAW PROHIBITS REVIVAL OF CLAIMS PREVIOUSLY BARRED BY A STATUTE OF LIMITATIONS

From the face of Salinas' complaint, the latest time a cause of action might have accrued in his favor would have been December 31, 1976, the last day of the last year alleged as the time of the sexual advances. At that point in time, Florida Statutes did not provide a specific limitations period for the cause of action alleged. Rather, the only possible statutory limitations that would apply was to be found in §§95.11(3)(o) and (p), Florida Statutes, which provided a four year statute of limitations for battery, intentional tort or for "*...any action not specifically provided for in these statutes.*" Applying this limitation period to the present case demonstrates that the cause of action was extinguished by operation of this statute of limitations on December 31, 1980.

In 1992, twelve years after Salinas' cause of action was precluded, §95.11 of the Florida Statutes was amended. See Chapter 92-102, Laws of 1992, Twelfth Legislature. Chapter 92-102 created a new statute of limitations period for sexual abuse cases. Specifically, section one provides that an action founded on abuse may be commenced within 7 years of the age of majority, within 4 years after the injured person leaves the dependency of the abuser, or within 4 years from the time of discovery of the injury and its causal relationship to the abuse, whichever is later.

The Second District Court of Appeal in the present case ruled that as a result of this amendment all previously barred causes of actions are now revived and therefore Salinas' cause of action can now be brought. This is not however clear from the language of this amendment, nor is there any evidence that this was the intent of the

legislature in drafting this amendment. More importantly, even if it was the intent of the legislature to retroactively revive previously time barred causes of action, such a result is clearly impermissible.

Florida law is clear that where an action is time barred by a prior statute, a subsequent amendment extending the time does not revive the extinguished action. *Wiley v. Roof,* 19 Fla. L. Weekly S334 (Fla. June 24, 1994). In *Wiley v. Roof* this Court specifically held that chapter 92-102, section 2, if applied retroactively would deprive a defendant of a constitutionally protected property interest and would be violative of article I, section 9 of the Florida Constitution. As a result, the court determined that the provision was invalid as to previously barred actions. *Id.* The court went on to say that retroactively applying a new statute of limitations robs both the plaintiff and defendant of the reliability and predictability of the law.

> The immunity from suit which arises by operation of the statute of limitations is as valuable a right as the right to bring the suit itself.... Statutes of limitation are not only calculated for the repose and peace of society, but to provide against the evils that arise from loss of evidence and the failing memory of witnesses....Once the defense of the statute of limitations has accrued, it is protected as a property interest just as the plaintiff's right to commence an action is a valid and protected property interest. *Id.*

Although it is true that the legislature has the power to increase a prescribed period of limitation, it may do so only if the "change in the law is effective **before** the cause of action is extinguished by the force of a pre-existing statute." *Walter Denson & Son v. Nelson,* 88 So.2d 120, 121 (Fla 1956)(emphasis added). A party has the "'right to have the statute of limitations period become vested once it has completely run and

barred [an] action.'" *Firestone Tire & Rubber Co.*, 612 So.2d 1361, 1364 (Fla. 1992), (quoting *Mazda Motors of America, Inc. v. S.C. Henderson & Sons, Inc.*, 3634 So.2d 107, 108 (Fla 1 DCA 1978), *cert. denied*, 378 So.2d 348 (Fla. 1979).

In the present case the Salinas' claim was barred, at the very least, twelve (12) years prior to the effective date of the amendment. Mason had a "right to have the statute of limitation period become vested" at that time. The legislature's power to increase the statute of limitations for that claim was therefore extinguished at that time. Accordingly, even if the legislature wished to revive otherwise extinguished causes of action, such legislation would be impermissible under the cited authorities.

If the decision of the court of appeal is left standing, the potential for an inordinate number of claims which were previously extinguished by the existing statute of limitations will now be revived. In each of those cases, the passage of time, stale evidence, and unavailable witnesses will work to deprive Mason of an opportunity to fairly present a defense and will be contrary to the law as outlined by this court previously in *Wiley v. Roof.* The Second District's decision in the present should therefore be overturned.

CONCLUSION

Based upon the foregoing, it is clear that the Second District Court of Appeals erred in overturning the trial court's dismissal of the present case. That decision should therefore now be overturned.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular United States Mail this 13 day of July, 1994, to Attorney for Respondent, **J. ARBY VAN SLYKE, ESQ.**, 216 E. Government Street, P.O. Box 13244, Pensacola, Florida 32591.

McDONNELL LAW OFFICES
Suite 304 at The Commons
720 Goodlette Road North
Naples, Florida 33940
(813) 434-7711

By: _____
MICHAEL R.N. McDONNELL
Florida Bar No. 124032
Attorney for Petitioner

APPENDIX