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IN THE SUPREME COURT OF FLORIDA

DAVID MASON,

Petitioner,

vs. Case No.: 82,968

ARTURO SALINAS, JR.

Respondent
_____/

PETITIONER'S JURISDICTIONAL BRIEF

On Review from the District Court of Appeal
Second District, State of Florida
In Case No. 92-4118

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

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF THE CASE AND FACTS

Plaintiff/Respondent filed suit against the defendant/petitioner for damages, in August of 1992 alleging that he was sexually abused by defendant while a student at Gulfview Middle School between 1974 and 1976. 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."

The Defendant/Petitioner moved to dismiss the Complaint on the ground that the four year statute of limitations precluded the Respondent's cause of action. The trial court granted Petitioner's motion with prejudice on October 26, 1992.

The respondent appealed to the Second District Court of Appeal alleging that Chapter 92-102, Laws of 1992, Twelfth Legislature, which amended §95.11, revived Respondent's cause of action, twelve years after its preclusion by the existing statute of limitations. In support of this position the Respondent 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. 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." The Appendix contains a copy of the appellate court's decision dated October 15, 1993.

The petitioner filed a motion for rehearing which was denied on November 29, 1993, and a notice to invoke the discretionary jurisdiction of this court was timely filed on December 28, 1993.

SUMMARY OF ARGUMENT

Pursuant to Rule 9.030(a)(2)(A)(i) of the Rules of Appellate Procedure "the discretionary jurisdiction of the Supreme Court may be sought to review decisions of district courts of appeal that expressly declare valid a state statute." The Appellate Court's decision validates the statutory amendment to Florida Statutes, §95.11, contained in Chapter 92-102, Laws of 1992, Twelfth Legislature.

Specifically the Second District Court of Appeal ruled, based on its previous decision in *Roof v. Wiley*, 622 So.2d 1018 (Fla. 2 DCA 1993), that it was the legislature's intent that the 1992 amendment to §95.11 retroactively apply so as to revive ***all*** causes of action relating to abuse and incest which were long before precluded by the existing statute of limitations. In addition it was the court's position that such retroactive application did not violate any constitutional rights of the defendant.

Even a cursory review of the foregoing statute reveals however that the appellate court's interpretation and subsequent validation of this statute is not consistent with the clear and unequivocal meaning of the language contained therein.

Moreover the decision of the Second District Court of Appeals expressly and directly conflicts with the decision of the Supreme Court of Florida in *Firestone Tire & Rubber Co. v. Acosta,* 612 So.2d 1361 (Fla. 1992) and the decision of the district court of

appeal in *Mazda Motors of America, Inc. v. S.C. Henderson & Sons, Inc.,* 364 So.2d 107 (Fla 1 DCA 1978), *cert. denied,* 378 So.2d 348 (Fla.1979). In *Firestone* the Court ruled that 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.,* at 1364 (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).

By contrast in the decision of *Roof v. Wiley* the Second District Court of Appeal found that if the lapse of time did not vest a party with title to real or personal property a state legislature may repeal or extend a statute of limitations even after a right of action is barred. *Roof v. Wiley, at* 1019 (citing *Chase Securities Corp. v. Donaldson,* 325 U.S. 304, 311-12, 65 S.Ct. 1137, 89 L.Ed. 1628 (1945); *Campbell v. Holt,* 115 U.S. 620, 6 S.Ct. 209, 29 L.Ed. 483 (1885)).

It is therefore necessary for the Supreme Court to exercise its discretionary review of these decisions pursuant to Fla. R. App. P. 9.030(a)(2)(A)(iv) and resolve the express and direct conflict which these varying decisions have created.

Perhaps even more importantly, the decision of the district court of appeal if allowed to stand would have the effect of reviving every cause of action which was ever precluded by the previous statute of limitations, no matter how old it may be. Such a flood of litigation is contrary to the good administration of Florida courts and would work severe injustice to those whose defenses are unavailable due to the passage of time.

JURISDICTIONAL STATEMENT

Pursuant to Rule 9.030(a)(2)(A)(i) of the Rules of Appellate Procedure the Supreme Court has discretionary jurisdiction to review any decision of the district court of appeals which expressly declares valid a state statute.

Pursuant to Florida Rules of Appellate procedure, Rule 9.030(a)(2)(A)(iv), the Supreme Court has discretionary review of decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law.

ARGUMENT

I.

Pursuant to Florida Rules of Appellate Procedure, Rule 9.030(a)(2)(A)(i), the Supreme Court has discretionary review of decisions of district courts of appeal which expressly declare valid a state statute. The Second District Court of Appeal has expressly declared Chapter 92-102, Laws of 1992, Twelfth Legislature, which amended §95.11, Florida Statutes, to be valid.

In 1992, twelve years after Respondent's 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.

As a result of the foregoing amendment the Second District Court of Appeal reversed the order of the lower court dismissing the present action. The Appellate Court

ruled that section two (2) of the amendment contains language which indicates the clear intent of the legislature to apply the new statute of limitations so as to revive previously time barred causes of action.

It is well settled however that a statute will be applied prospectively unless the intent of the legislature to do otherwise is express, clear and manifest. *Roof v. Wiley,* 622 So.2d at 1019, citing *Homemakers, Inc. v. Gonsales,* 400 So.2d 965 (Fla. 1981).

> Without the clear, express legislative intent of retroactive application, rights accrued or judgments rendered before the passage of such an amendment are not affected by the amendment but are governed instead by the original statute. *Roof v. Wiley,* 622 So.2d at 1019.

The statute at issue in the present case does not clearly and expressly manifest an intent by the legislature to apply the statute retroactively but instead contains language which protects existing claims from being precluded where they may have otherwise been barred by the new limitations period. It does not however revive previously barred claims.

The Second District Court of Appeal in *Roof v. Wiley* ruled that the amendment to section 95.11 revives previously time barred causes of action for molestation for a four year period. The Court based its decision on an analogy to *Celotex Corp. v. Meehan,* 523 So.2d 141 (Fla. 1988) which construed an amendment to a New York statute of limitations. The language of that amendment stated as follows:

> [E]very action for personal injury...caused by the effects of exposure to...asbestos...which is barred as of the effective date of this act or which was dismissed prior to the effective date to this act solely because the applicable period of limitations **has or had expired is hereby revived....** *Roof* at 1019 (emphasis added).

It cannot be disputed that the foregoing language clearly manifests an intent by the New York legislature to revive previously barred claims. No other interpretation can reasonable be gleaned from the language of the foregoing statute.

In contrast however the amendment to § 95.11 does not specifically state that it is reviving previously time barred causes of action, rather it merely provides a protection for causes of action which are currently viable and may be adversely affected by the 1992 amendment. Specifically section two of Chapter 92-102 states:

> **Notwithstanding any other provision of law,** a plaintiff whose abuse or incest claim is barred **under section one of this act** has four years from the effective date of this act to commence an action for damages.

The language of section one of the amendment is as follows:

> 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 7 years after the age of majority, or within 4 years after the injured person leaves the dependency of the abuser, or within 4 years form the time of discovery by the injured party of both the injury and the causal relationship between the injury and the abuse whichever occurs later.

The plaintiff's cause of action in the present case is not "barred under section one of this act" but rather was barred twelve (12) years prior by the four year statute of limitations which was in existence at that time. The plaintiff's cause of action is therefore time barred and cannot now be revived.

II.

Pursuant to Florida Rules of Appellate procedure, Rule 9.030(a)(2)(A)(iv), the Supreme Court has discretionary review of decisions of district courts of appeal that expressly and directly conflict with a decision of another district court of appeal or of the supreme court on the same question of law.

While 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 (Fla 1956)(emphasis added). The plaintiff's cause of action in the present case was extinguished long before the implementation of Chapter 92-102. The legislature's power to increase the statute of limitations for that claim is therefore also extinguished.

Regardless of the legislative intent, a statute's retroactivity will be ignored by the courts if the statute impairs vested rights, creates new obligations, or imposes new penalties. *Anderson v. Anderson*, 468 So.2d 528, 529 (Fla. 3 DCA 1985). According to the Supreme Court of Florida the statute of limitations becomes vested once a cause of action has been precluded. *Firestone Tire & Rubber Co. v. Acosta,* 612 So.2d 1361 (Fla. 1992). In *Firestone* the Court ruled that 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.,* at 1364 (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 plaintiff's claim was barred, at the very least, twelve (12) years prior to the effective date of the amendment. The petitioner therefore had a "right to have the statute of limitation period become vested" at that time. The statute therefore cannot validly revive Plaintiffs cause of action. Such a result expressly and directly conflicts with decisions of both the Supreme Court of this state as well as with the district court of appeal. *See generally, Firestone Tire & Rubber Co. v. Acosta,* 612 So.2d 1361 (Fla. 1992); and *Mazda Motors of America, Inc. v. S.C. Henderson & Sons, Inc.,* 364 So.2d 107 (Fla 1 DCA 1978), *cert. denied*, 378 So.2d 348 (Fla.1979).

Moreover, under the Appellate Court's interpretation of Chapter 92-102, ***all*** causes of action which ever existed and were once precluded are now revived. Such a decision invariably will result in a flood of litigation of claims which were long ago barred by a previous statute of limitation. Statutes of limitation are "designed to prevent the assertion of stale claims after the lapse of a long period of time." §3, Fla Jur 2d, Limitations and Laches. They are intended to encourage promptness, set definitive time limits and to protect defendants against unusually long delays in the filing of lawsuits. *Id.* Statutes of limitation "are not simply technicalities; they are fundamental to a well-ordered judicial system." *Id.*

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 the defendant of an opportunity to fairly present a defense. While sexual abuse is a clearly recognized social problem

that must be addressed, the instant statute, as interpreted by the appellate court, does nothing to present a solution. Rather, it threatens a "well-ordered judicial system" and serves to bring injustice to those who participate in it.

CONCLUSION

Because the Second District Court of Appeal has expressly declared the foregoing statute valid, and because the decision expressly and directly conflicts with decisions of the Supreme Court of Florida and a district court of appeal, this court has discretionary jurisdiction to review that decision. This court should exercise that discretion and accept jurisdiction in order to address the fundamental injustice imposed by the interpretation of the court of appeal.

Respectfully submitted,

Michael R.N. McDonnell

APPENDIX

Conformed copy of the decision of the Second District Court of Appeal dated October 15, 1993.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by regular United States Mail this 21st day of January, 1994, to Attorney for Plaintiff/Appellant, **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

Conformed copy of the Decision of the Second District Court of Appeal dated October 15, 1993 A

M A N D A T E

From
DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

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STYLE: Arturo Salinas, Jr. v. David Mason

COUNTY: Collier

APPELLATE CASE NO: 92-04118

TRIAL COURT CASE NO: 92-3087-CA-01

This cause having been brought to this Court by appeal and after due consideration, the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that further proceedings be had in said cause in accordance with the opinion of this Court and with the rules of procedure and laws of the State of Florida.

Witness, The Honorable Richard H. Frank Chief Judge of District Court of Appeal of the State of Florida, Second District, and the Seal of the said Court at Lakeland, Florida on this day.

January 3, 1994

William A. Haddad
William A. Haddad
Clerk, District Court of Appeal of Florida, Second District

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING
MOTION AND, IF FILED, DETERMINED.

IN THE DISTRICT COURT OF APPEAL

OF FLORIDA

SECOND DISTRICT

ARTURO SALINAS, JR. Appellant, v. DAVID MASON, Appellee.	)	Case No. 92-04118

Opinion filed October 15, 1993.

Appeal from the Circuit
Court for Collier County;
Gilbert A. Smith, (Senior)
Associate Judge.

J. Arby Van Slyke of
J. Arby Van Slyke, P.A.,
Pensacola, for Appellant.

Michael R.N. McDonnell of
McDonnell Law Offices,
Naples, for Appellee.

RYDER, Judge.

Arturo Salinas, Jr. attacks the trial court's order dismissing with prejudice his complaint alleging intentional sexual abuse which occurred approximately fifteen years ago. We reverse because this court recently ruled in Roof v. Wiley, 18

Fla. L. Weekly D1469 (Fla. 2d DCA June 18, 1993), rehearing denied, No. 91-04243 (Fla. 2d DCA Aug. 24, 1993), that section 2 of Chapter 92-102, amending section 95.11, Florida Statutes (1992 Supp.), revived for a four-year period previously time-barred causes of action based on intentional abuse or incest. The four-year window commenced April 8, 1992, and Salinas' complaint was filed within this period on August 26, 1992.

Reversed and remanded.

FRANK, C.J., Concurs.
Hall, J., Concurs Specially.

HALL, Judge, Concurring.

Even though I am concerned with the potential for future enactment of further retroactive legislation dealing with statutes of limitation, I must agree with the majority that our decision is controlled by Roof v. Wiley, wherein we held that a party holds no vested right in the termination of a cause of action because of the running of the statute of limitation, and the legislature can revive an expired cause of action without the violation of a constitutional right. It is interesting to note that the Supreme Court of Virginia reached the exact opposite decision in a well-reasoned opinion in Starnes v. Cayouette, 419 S.E.2d 669 (Va. 1992).

Although, the parties have not raised the issue of the definition of abuse, for which section 95.11, Florida Statutes,

refers to section 39.01(2) of the Juvenile Justice Act, I perceive a possible constitutional problem because the definition of abuse in the Juvenile Justice Act may be vague and overbroad in the context of section 95.11.